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Contents

Federal Register

Vol. 67, No. 219

Wednesday, November 13, 2002

Agriculture Department

See Forest Service

NOTICES

Agency information collection activities:

- Proposed collection; comment request, 68828
- Submission for OMB review; comment request, 68828–68831

Coast Guard

RULES

Ports and waterways safety:

- San Juan, PR; security zone, 68762–68764
- St. Thomas, U.S. Virgin Islands; security zones, 68760–68762

Commerce Department

See Foreign-Trade Zones Board

See International Trade Administration

Committee for the Implementation of Textile Agreements

NOTICES

Cotton, wool, and man-made textiles:

- Bangladesh, 68835
- Philippines, 68835–68836
- Ukraine, 68836

Special access and special regime programs:

- Caribbean Basin countries; participating requirements; temporary amendments, 68836–68837

Textile and apparel categories:

- Quota and visa requirements; exemptions—
- Apparel articles assembled from regional fabric in beneficiary Andean countries, 68837–68838

Commodity Futures Trading Commission

PROPOSED RULES

Commodity pool operators and commodity trading advisors:

- Requirement to register for CPOs of certain pools and CTAs advising such pools; exemption, 68785–68790

Defense Department

PROPOSED RULES

Federal Acquisition Regulation (FAR):

- Government Printing Office; printing and duplicating procurement, 68913–68918

NOTICES

Agency information collection activities:

- Proposed collection; comment request, 68838

Courts-Martial Manual; amendments, 68838–68841

DOD Dependents Schools; minor dependents in overseas areas; education eligibility requirements; class tuition waivers, 68841

Meetings:

- Defense Business Practice Implementation Board, 68841–68842
- Military Personnel Testing Advisory Committee, 68842

Drug Enforcement Administration

NOTICES

Agency information collection activities:

- Submission for OMB review; comment request, 68886–68887

Education Department

NOTICES

Agency information collection activities:

- Proposed collection; comment request, 68842
- Submission for OMB review; comment request, 68842–68843

Energy Department

See Federal Energy Regulatory Commission

Environmental Protection Agency

RULES

Air quality implementation plans; approval and promulgation; various States:

- Arizona, 68764–68767
- South Carolina, 68767–68769

Air quality planning purposes; designation of areas:

- Nevada, 68769–68778

Water supply:

- National primary and secondary drinking water regulations—
- Public water systems; Aeromonas; analytical method approval; correction, 68911

PROPOSED RULES

Air quality implementation plans; approval and promulgation; various States:

- South Carolina, 68804–68805

Air quality planning purposes; designation of areas:

- District of Columbia et al., 68805–68814

NOTICES

Agency information collection activities:

- Submission for OMB review; comment request, 68859–68863

Air pollution control:

- Citizens suits; proposed agreements—
- Utility Air Regulatory Group, 68863

Meetings:

- FIFRA Scientific Advisory Panel, 68863–68864

Pesticide registration, cancellation, etc.:

- Nichino America, Inc., et al., 68864–68866

Reports and guidance documents; availability, etc.:

- Pesticide registrations; data citation requirements; compliance, 68866–68868

Superfund; response and remedial actions, proposed settlements, etc.:

- Nazcon Concrete Site, MD, 68868–68869

Water pollution control:

- National pollutant discharge elimination system (NPDES)—

- Alaska; log transfer facilities; general permits, 68869–68870

Executive Office of the President

See Presidential Documents

Federal Aviation Administration

RULES

Airworthiness directives:

- Gulfstream, 68755–68757

Airworthiness standards:

- Special conditions—

- Embraer Model 170-100 and 170-200 airplanes, 68753–68755

Class E airspace, 68757–68759

PROPOSED RULES

Airworthiness directives:

 Piaggio Aero Industries S.p.A., 68782–68785

 Short Brothers PLC, 68779–68781

Class E2 and E4 airspace; correction, 68785

NOTICES

Agency information collection activities:

 Submission for OMB review; comment request, 68901

Airport land-use assurance; waivers:

 Hilo and Kahului Airports, HI, 68901–68902

Artisan liens on aircraft; recordation; list, 68902

Environmental statements; availability, etc.:

 Toledo Express Airport, OH, 68902–68903

Meetings:

 Aviation Rulemaking Advisory Committee, 68903–68904

Passenger facility charges; applications, etc.:

 Atlantic City International Airport, NJ, 68904

 Melbourne International Airport, FL, 68904–68905

 Syracuse, NY, Aviation Department, et al., 68905–68907

Federal Communications Commission

NOTICES

Agency information collection activities:

 Proposed collection; comment request, 68870

Federal Emergency Management Agency

NOTICES

Disaster and emergency areas:

 Louisiana, 68870–68871

 Mississippi, 68871

Federal Energy Regulatory Commission

NOTICES

Electric rate and corporate regulation filings:

 Great Bay Power Corp. et al., 68854–68855

 Pacer Power LLC et al., 68856–68857

Environmental statements; availability, etc.:

 Hart, MI, 68857

Hydroelectric applications, 68857–68859

Applications, hearings, determinations, etc.:

 Alliance Pipeline L.P., 68843–68844

 ANR Pipeline Co., 68844

 ANR Storage Co., 68844

 CenterPoint Energy Gas Transmission Co., 68845

 Colorado Interstate Gas Co., 68845–68846

 Columbia Gulf Transmission Co., 68846

 Discovery Gas Transmission LLC, 68846

 Eastern Shore Natural Gas Co., 68846–68847

 El Paso Natural Gas Co., 68847

 Guardian Pipeline, L.L.C., 68847–68848

 Gulf States Transmission Corp., 68848

 High Island Offshore System, L.L.C., 68848

 Iroquois Gas Transmission System, L.P., 68848–68849

 KO Transmission Co., 68849

 Natural Gas Pipeline Co. of America, 68849

 Orion Power New York GP II, Inc., 68849–68850

 Questar Pipeline Co., 68850

 Tennessee Gas Pipeline Co., 68850–68851

 Texas Eastern Transmission, LP, 68851

 Texas Gas Transmission Corp., 68852

 TransColorado Gas Transmission Co., 68852

 Transcontinental Gas Pipe Line Corp., 68852–68853

 Williams Gas Pipelines Central Inc., 68853

Federal Maritime Commission

NOTICES

Investigations, hearings, petitions, etc.:

 Golden Bridge International Inc., 68871

Federal Reserve System

NOTICES

Banks and bank holding companies:

 Change in bank control, 68871–68872

 Formations, acquisitions, and mergers, 68872

Meetings; Sunshine Act, 68872

Financial Management Service

See Fiscal Service

Fiscal Service

NOTICES

Surety companies acceptable on Federal bonds:

 Delta Casualty Co., 68909–68910

Treasury book-entry securities held on National Book Entry System; transfer; fee schedule; correction, 68911

Fish and Wildlife Service

NOTICES

Meetings:

 Hanford Reach National Monument Federal Advisory Committee, 68881

Food and Drug Administration

RULES

Animal drugs, feeds, and related products:

 Deracoxib, 68759–68760

 Gonadorelin diacetate tetrahydrate, 68760

NOTICES

Agency information collection activities:

 Proposed collection; comment request, 68874–68876

 Submission for OMB review; comment request, 68876–68877

Debarment orders:

 Lai, Elaine Yee-Ling, 68877

Meetings:

 Medical Devices Advisory Committee, 68878

 Pulmonary-Allergy Drugs Advisory Committee, 68878–68879

Foreign-Trade Zones Board

NOTICES

Applications, hearings, determinations, etc.:

 Nevada, 68832

 Various States—

 Flint Ink North America Corp.; pigments, inks, and varnish products manufacturing and distribution facilities, 68832

Forest Service

NOTICES

Boundary establishment, descriptions, etc.:

 Stumpy Point Purchase Unit, Phillips and Lee Counties, AR, 68831–68832

General Services Administration

PROPOSED RULES

Federal Acquisition Regulation (FAR):

 Government Printing Office; printing and duplicating procurement, 68913–68918

NOTICES

Environmental statements; notice of intent:

 Washington, DC; Southeast Federal Center, 68872–68874

Health and Human Services Department

See Food and Drug Administration

See Health Resources and Services Administration

See Substance Abuse and Mental Health Services Administration

NOTICES

Meetings:

Asian Americans and Pacific Islanders White House Initiative, President's Advisory Commission, 68874

Health Resources and Services Administration**NOTICES**

Agency information collection activities:

Submission for OMB review; comment request, 68879

Grants and cooperative agreements; availability, etc.:

Children's Hospitals Graduate Medical Education Payment Program, 68879–68880

Housing and Urban Development Department**NOTICES**

Agency information collection activities:

Submission for OMB review; comment request, 68880–68881

Immigration and Naturalization Service**NOTICES**

Immigration:

Aliens arriving in U.S. by sea, not admitted or paroled, and not physically present in U.S. for two years prior to inadmissibility determination

Expedited removal proceedings, 68923–68926

Interior Department

See Fish and Wildlife Service

See Land Management Bureau

See Surface Mining Reclamation and Enforcement Office

International Trade Administration**NOTICES**

Antidumping:

Corrosion-resistant carbon steel flat products from—
Korea, 68832–68833

Cut-to-length carbon steel plate from—
Mexico, 68833

Stainless steel wire rod from—
India, 68834

Applications, hearings, determinations, etc.:

University of—
Vermont, 68834–68835

Justice Department

See Drug Enforcement Administration

See Immigration and Naturalization Service

See Justice Programs Office

NOTICES

Agency information collection activities:

Proposed collection; comment request, 68885

Submission for OMB review; comment request, 68885–68886

Justice Programs Office**NOTICES**

Agency information collection activities:

Proposed collection; comment request, 68887–68888

Land Management Bureau**RULES**

Minerals management:

Mineral materials disposal; sales; free use; correction,
68778

NOTICES

Coal leases, exploration licenses, etc.:

Montana, 68881–68882

Oil and gas leases:

Mississippi, 68882

National Aeronautics and Space Administration**PROPOSED RULES**

Federal Acquisition Regulation (FAR):

Government Printing Office; printing and duplicating procurement, 68913–68918

National Highway Traffic Safety Administration**NOTICES**

Agency information collection activities:

Submission for OMB review; comment request, 68907–68908

Motor vehicle safety standards:

Nonconforming vehicles—

Importation eligibility; determinations, 68908–68909

National Transportation Safety Board**NOTICES**

Meetings; Sunshine Act, 68888

Nuclear Regulatory Commission**NOTICES**

Petitions; Director's decisions:

PSEG Nuclear, LLC, et al., 68888–68890

Personnel Management Office**NOTICES**

Agency information collection activities:

Submission for OMB review; comment request, 68890–68891

Presidential Documents**PROCLAMATIONS***Special observances:*

National Employer Support of the Guard and Reserve Week (Proc. 7624), 68919–68922

ADMINISTRATIVE ORDERS

Iran; continuation of national emergency (Notice of November 12, 2002), 68927–68929

Public Debt Bureau

See Fiscal Service

Public Health Service

See Food and Drug Administration

See Health Resources and Services Administration

See Substance Abuse and Mental Health Services Administration

Research and Special Programs Administration**PROPOSED RULES**

Pipeline safety:

Gas pipeline safety standards; regulatory review, 68815–68827

Securities and Exchange Commission**PROPOSED RULES**

Securities:

Sarbanes-Oxley Act of 2002; implementation—

Non-Generally Accepted Accounting Principles (GAAP) financial measures; conditions for use, 68790–68804

NOTICES

Agency information collection activities:

Proposed collection; comment request, 68891

Investment Company Act of 1940:

Exemption applications—

Federated Index Trust et al., 68891–68893

Self-regulatory organizations; proposed rule changes:

American Stock Exchange LLC, 68893–68894

Chicago Board Options Exchange, Inc., 68894–68895

Nasdaq Liffe Markets, LLC, 68895–68898

Philadelphia Stock Exchange, Inc., 68898–68901

Substance Abuse and Mental Health Services Administration**NOTICES**

Agency information collection activities:

Submission for OMB review; comment request, 68880

Surface Mining Reclamation and Enforcement Office**NOTICES**

Reports and guidance documents; availability, etc.:

Information disseminated by Federal agencies; quality, objectivity, utility, and integrity guidelines, 68882–68885

Textile Agreements Implementation Committee*See* Committee for the Implementation of Textile Agreements**Transportation Department***See* Coast Guard*See* Federal Aviation Administration*See* National Highway Traffic Safety Administration*See* Research and Special Programs Administration**Treasury Department***See* Fiscal Service**Separate Parts In This Issue****Part II**

Defense Department; General Services Administration; National Aeronautics and Space Administration, 68913–68918

Part III

Executive Office of the President, Presidential Documents, 68919–68922

Part IV

Justice Department; Immigration and Naturalization Services, 68923–68926

Part V

Executive Office of the President, Presidential Documents, 68927–68929

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR**Proclamations:**

762468921

Executive Orders:12170 (See Notice of
November 12,
2002)68929**Administrative Orders:**

Notices

Notice of November
12, 200268929**14 CFR**

2568753

3968755

71 (2 documents)68757,
68758**Proposed Rules:**39 (2 documents)68779,
68782

7168785

17 CFR**Proposed Rules:**

468785

22868790

22968790

24468790

24968790

21 CFR

52068759

52268760

33 CFR165 (2 documents)68760,
68762**40 CFR**52 (2 documents)68764,
68767

8168769

14168911

Proposed Rules:

5268804

8168805

43 CFR

360068778

820068778

836068778

48 CFR**Proposed Rules:**

668914

868914

5268914

49 CFR**Proposed Rules:**

19268815

Rules and Regulations

Federal Register

Vol. 67, No. 219

Wednesday, November 13, 2002

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM239; Special Conditions No. 25-223-SC

Special Conditions: Embraer Model 170-100 and 170-200 Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer Model 170-100 and 170-200 airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The airplane design includes an electronic flight control system as well as advanced avionics for the display and control of critical airplane functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of Embraer Model 170-100 and 170-200 airplanes.

DATES: The effective date of these special conditions is November 1, 2002. Comments must be received on or before December 13, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate,

Attention: Rules Docket (ANM-113), Docket No. NM239, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM239. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM-116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-1503; facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment hereon is unnecessary as the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting such written comments, data, or views, as they may desire. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these

special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 20, 1999, Embraer applied for a type certificate for its new Model 170 airplane. Two basic versions of the Model 170 are included in the application. The Model 170-100 airplane is a 69-78 passenger twin-engine regional jet with a maximum takeoff weight of 81,240 pounds. The Model 170-200 is a lengthened fuselage derivative of the 170-100. Passenger capacity for the Model 170-200 is increased to 86, and maximum takeoff weight is increased to 85,960 pounds. Embraer Model 170-100 and 170-200 airplanes will include an electronic flight control system as well as advanced avionics for the display and control of critical airplane functions. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer must show that Model 170-100 and 170-200 airplanes meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25-1 through 25-98.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for Embraer Model 170-100 and 170-200 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Embraer Model 170-100 and 170-200 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Pub. L. 93-574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the airplane's type certification basis in accordance with § 21.101(b)(2), Amendment 21-69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21-69, effective September 16, 1991.

Novel or Unusual Design Features

As noted earlier, Embraer Model 170-100 and 170-200 airplanes will include an electronic flight control system as well as advanced avionics for the display and control of critical airplane functions. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards that address the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be novel or unusual design features.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Embraer Model 170-100 and 170-200 airplanes. These special conditions require that avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.
 - a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.
 - b. Demonstration of this level of protection is established through system tests and analysis.
2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz-100kHz	50	50
100 kHz-500 kHz	50	50
500 kHz-2 MHz	50	50
2 MHz-30 MHz	100	100
30 MHz-70 MHz	50	50
70 MHz-100 MHz	50	50
100 MHz-200 MHz	100	100
200 MHz-400 MHz	100	100
400 MHz-700 MHz	700	50
700 MHz-1 GHz	700	100
1 GHz-2 GHz	2000	200
2 GHz-4 GHz	3000	200
4 GHz-6 GHz	3000	200
6 GHz-8 GHz	1000	200
8 GHz-12 GHz	3000	300
12 GHz-18 GHz	2000	200
18 GHz-40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Embraer Model 170-100 and 170-200 airplanes. Should Embraer apply at a later date for a change to the type certificate to

include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well, under the provisions of § 21.101(a)(2), Amendment 21-69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features of the Embraer Model 170-100 and 170-200 airplanes. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. The FAA has determined that prior public notice and comment are unnecessary, and that good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Embraer Model 170-100 and 170-200 airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on November 1, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-28824 Filed 11-12-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-265-AD; Amendment 39-12945; AD 2002-23-01]

RIN 2120-AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Galaxy and Gulfstream 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Gulfstream Aerospace LP Model Galaxy and Gulfstream 200 airplanes. This action requires a one-time inspection for evidence of damage to the forward engine cross spar assembly; and repair if necessary. This action is necessary to detect and correct damage to the forward engine cross spar assembly, which could result in reduced structural integrity of the forward engine cross spar assembly. This action is intended to address the identified unsafe condition.

DATES: Effective November 29, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 29, 2002.

Comments for inclusion in the Rules Docket must be received on or before December 13, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-265-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain

“Docket No. 2002-NM-265-AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on certain Gulfstream Model Galaxy and Gulfstream 200 airplanes. The CAAI advises that, during the installation of the mounting brackets for the baggage compartment liner, damage occurred to the upper beam cap of the forward engine cross spar assembly, located at fuselage station 582.00. The damage may have been a result of drill runs, and, if not corrected, could result in reduced structural integrity of the forward engine cross spar assembly.

Explanation of Relevant Service Information

Gulfstream has issued Gulfstream 200 Service Bulletin 200-53-128, dated September 18, 2002, including a Service Reply Card, which describes procedures for performing a one-time detailed inspection for evidence of damage (*i.e.*, drill marks) to the forward engine cross spar assembly at fuselage station 582.00; and contacting the airplane manufacturer for repair instructions, if necessary. The service bulletin recommends that operators submit a report verifying completion of the actions. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAAI classified this service bulletin as mandatory and issued Israeli airworthiness directive 53-02-08-08, dated September 10, 2002, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between This AD and Service Bulletin/Foreign Airworthiness Directive

This AD differs from the parallel Israeli airworthiness directive and Gulfstream 200 service bulletin in that, if damage is found to the forward engine cross spar assembly, and repair is necessary, the repair must be accomplished prior to further flight. The service bulletin and the Israeli airworthiness directive allow the repair to be accomplished after an additional 2 flight cycles, not to exceed 10 flight hours. The FAA has determined that, because of the safety implications and consequences associated with this type of damage, any damage on the affected airplanes must be repaired prior to further flight. This difference has been coordinated with the CAAI.

Clarification of Repair Information in Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of repair methods, this AD requires that the repair be accomplished in accordance with a method approved by the FAA or the CAAI (or its delegated agent).

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good

cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-265-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is

determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002-23-01 Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Amendment 39-12945. Docket 2002-NM-265-AD.

Applicability: Model Galaxy airplanes, having serial numbers 004 through 056 inclusive; and Gulfstream 200 airplanes, having serial numbers 057 through 073 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by

this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damage to the forward engine cross spar assembly, which could result in the reduced structural integrity of the forward engine cross spar assembly, accomplish the following:

Inspection and Corrective Action, If Necessary

(a) Within 20 flight cycles after the effective date of this AD, perform a one-time detailed inspection to detect evidence of damage (i.e., drill marks) to the forward engine cross spar assembly at fuselage station 582.000, per the Accomplishment Instructions of Gulfstream 200 Service Bulletin 200-53-128, dated September 18, 2002.

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

(1) If no evidence of damage is found, no further action is required by this paragraph.

(2) If any damage is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate; or the Civil Aviation Administration of Israel (or its delegated agent).

Reporting Requirement

(b) Submit a report of inspection findings (both positive and negative) to Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402; fax (912) 965-3598; at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. The report must include the inspection results, a description of any discrepancy found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 60 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 60 days after the effective date of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, International Branch, ANM-116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

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

Special Flight Permits

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

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Gulfstream 200 Service Bulletin 200-53-128, dated September 18, 2002, including a Service Reply Card. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Israeli airworthiness directive 53-02-08-08, dated September 10, 2002.

Effective Date

(f) This amendment becomes effective on November 29, 2002.

Issued in Renton, Washington, on November 5, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-28613 Filed 11-12-02; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02-ACE-11]

Amendment to Class E Airspace; Ulysses, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Ulysses, KS in order to

provide a safer Instrument Flight Rules (IFR) environment at Ulysses Airport, Ulysses, KS. The FAA has developed Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 12, ORIGINAL Standard Instrument Approach Procedure (SIAP); RNAV (GPS) RWY 17, ORIGINAL SIAP; RNAV (GPS) RWY 30, ORIGINAL SIAP; RNAV (GPS) RWY 35, ORIGINAL SIAP; and Nondirectional Radio Beacon (NDB) RWY 12, Amendment 3 SIAP to serve Ulysses Airport, Ulysses, KS. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing an SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

EFFECTIVE DATE: This direct final rule is effective on 0901 UTC, February 20, 2003.

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

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE-520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 02-ACE-11, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT:

Kathy Randolph, Air Traffic Division, Airspace Branch, ACE-520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329-2525.

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV (GPS) RWY 12, 17, 30 and 35, ORIGINAL SIAPs and NDB RWY 12, Amendments 3 SIAP to serve Ulysses Airport, Ulysses, KS. The amendment to Class E airspace at Ulysses, KS will provide additional controlled airspace and at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace

areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 02-ACE-11." The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

ACE KS E5 Ulysses, KS [Revised]

Ulysses Airport, KS

(Lat. 37°36'14"N., long. 101°22'24"W.)

Ulysses NDB

(Lat. 37°35'50"N., long. 101°22'05"W.)

That airspace extending upward toward from 700 feet above the surface within a 6.8-mile radius of Ulysses Airport and within 1.0 mile each side of the 306° bearing from the Ulysses NDB extending from the 6.8-mile radius to 10.5 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on October 28, 2002.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 02-28831 Filed 11-12-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01-AWP-15]

Modification of Class E Airspace; Needles Airport, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Needles Airport, CA. The establishment of an Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) RNAV (GPS) Runway (RWY) 29 SIAP to Needles Airport, Needles, CA has made action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 29 SIAP to Needles Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules operations at Needles Airport, Needles, CA.

EFFECTIVE DATE: 0901 UTC January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6611.

SUPPLEMENTARY INFORMATION:

History

On August 27, 2002, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Needles Airport, CA (67 FR 54977). Additional controlled airspace extending upward from 700 feet or more above the surface is needed to contain aircraft executing the RNAV (GPS) RWY 29 SIAP to Needles Airport. This action will provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 29 SIAP to Needles Airport, Needles, CA.

Interested parties were invited to participate in this rulemaking, proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 31, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Needles Airport, CA. The establishment of a RNAV (GPS) RWY 29 SIAP to Needles Airport has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the RNAV (GPS) RWY 29 SIAP to Needles Airport, Needles, CA.

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

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 31, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Needles Airport, CA [Revised]

Needles Airport, CA

(Lat. 34°45'58" N, long. 114°37'24" W)

Needles VORTAC

(Lat. 34°45'58" N, long. 114°28'27" W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Needles Airport; and that airspace extending upward from 1200 feet above the surface within 7.8 miles south and 11.3 miles north of the Needles VORTAC 092° and 272° radials, extending from 9.6 miles west to 20.9 miles east of the Needles VORTAC.

* * * * *

Issued in Los Angeles, California, on October 24, 2002.

John Clancy,

Manager, All Traffic Division, Western-Pacific Region.

[FR Doc. 02–28829 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Gonadorelin Diacetate Tetrahydrate

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 abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for use of gonadorelin diacetate tetrahydrate solution by injection in dairy cattle for the treatment of ovarian cysts.

DATES: This rule is effective November 13, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457, filed ANADA 200–069 that provides for veterinary prescription use of FERTELIN (gonadorelin diacetate tetrahydrate) Injection by intramuscular or intravenous injection in dairy cattle for the treatment of ovarian cysts. Phoenix's FERTELIN Injection is approved as a generic copy of Merial, Ltd.'s CYSTORELIN, approved under NADA 98–379. ANADA 200–069 is approved as of August 26, 2002, and the regulations are amended in § 522.1078 (21 CFR 522.1078) to reflect the approval. Section 522.1078 is also being revised to reflect a current format. The basis of approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on

the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subject in 21 CFR Part 522

Animal drugs.

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

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

2. Section 522.1078 is revised to read as follows:

§ 522.1078 Gonadorelin diacetate tetrahydrate.

(a) *Specifications.* Each milliliter of solution contains 50 micrograms (µg) of gonadorelin diacetate tetrahydrate.

(b) *Sponsors.* See Nos. 050604, 057926, and 059130 in § 510.600(c) of this chapter.

(c) *Conditions of use in cattle.* It is used as follows:

(1) *Amount.* 100 µg per cow as a single intramuscular or intravenous injection.

(2) *Indications for use.* For the treatment of ovarian cysts in dairy cattle.

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

Dated: October 28, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–28716 Filed 11–12–02; 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; Deracoxib

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Novartis Animal Health US, Inc. The NADA provides for the veterinary prescription use of deracoxib tablets for the control of postoperative pain and inflammation associated with orthopedic surgery in dogs.

DATES: This rule is effective November 13, 2002.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV-110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-7543, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., 3200 Northline Ave., suite 300, Greensboro, NC 27408, filed NADA 141-203 that provides for the veterinary prescription use of DERAMAXX (deracoxib) Chewable Tablets for the control of postoperative pain and inflammation associated with orthopedic surgery in dogs weighing four or more pounds (1.8 kilograms). The NADA is approved as of August 21, 2002, and the regulations are amended in 21 CFR part 520 by adding new § 520.538 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetics Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning August 21, 2002.

The agency has determined under 21 CFR 25.33(d)(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 520.538 is added to read as follows:

§ 520.538 Deracoxib.

(a) *Specifications.* Each chewable tablet contains 25 or 100 milligrams (mg) deracoxib.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use in dogs—(1) Amount.* 3 to 4 mg per kilogram (kg) (1.4 to 1.8 mg per pound) of body weight once daily for 7 days, given orally.

(2) *Indications for use.* For the control of postoperative pain and inflammation associated with orthopedic surgery in dogs weighing 4 or more pounds (1.8 kg).

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

Dated: October 25, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02-28714 Filed 11-12-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Juan 02-133]

RIN 2115-AA97

Security Zones; St. Thomas, United States Virgin Islands

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing temporary security zones 50 yards around all cruise ships in the Port of Charlotte Amalie, St. Thomas, United States Virgin Islands. These security zones are needed to protect the public and the Port of Charlotte Amalie from potential subversive acts.

DATES: This regulation becomes effective at 6 p.m. on November 4, 2002 and will terminate at 11:59 p.m. on June 15, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP San Juan 02-133] and are available for inspection or copying at Marine Safety Office San Juan, RODVAL Bldg., San Martin St. #90 Ste 400, Guaynabo, PR 00968, between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Michael Roldan, Marine Safety Office San Juan, Puerto Rico at (787) 706-2440.

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 a NPRM. Publishing a NPRM and delaying the rule's effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. The Coast Guard will issue a broadcast notice to mariners and a Marine Safety Information Bulletin via facsimile and electronic mail to advise mariners of the restriction.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Request for Comments

Although the Coast Guard has good cause to implement this regulation without a notice of proposed rulemaking, we want to afford the public the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP San Juan 02-133] indicate the specific section of this document to which each comment applies, and give the reason for each comment. 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 they 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 temporary final rule in view of them.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of Charlotte Amalie, USVI against cruise ships in the Port. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks), 67 FR 59447 (Sept. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S and such disturbances continue to endanger such relations)).

On February 1, 2002 the Coast Guard published a temporary final rule in the **Federal Register** (CGD07-01-136) that established temporary moving and fixed security zones 50 yards around all cruise ships entering, departing or moored in the Port of Charlotte Amalie (67 FR 4909). That rule expired on June 15, 2002. The Captain of the Port has determined that this rule is necessary to protect the Port of Charlotte Amalie from subversive activity. The Captain of the Port intends to issue a notice of proposed rulemaking in a separate document to be published in the **Federal Register** proposing to create permanent security zones around cruise ships in the Port of Charlotte Amalie.

Due to the number of passengers onboard cruise ships moored in the Port of Charlotte Amalie, USVI, there is a risk that they are a target for subversive activity or a terrorist attack. The Captain of the Port San Juan is reducing this risk by prohibiting all vessels from coming within 50 yards of cruise ships while entering, departing, moored at any pier, or anchored in any anchorage in the Port of Charlotte Amalie, St. Thomas, USVI unless prior authorization is given by the Captain of the Port of San Juan.

These temporary security zones are activated when cruise ships pass: St. Thomas Harbor green lighted buoy #3 in approximate position 18°19'19" North, 64°55'40" West when entering the port

using St. Thomas Channel; red buoy #2 in approximate position 18°19'15" North, 64°55'59" West when entering the port using East Gregorie Channel; and red lighted buoy #4 in approximate position 18°18'16" North, 64°57'30" West when entering the port using West Gregorie Channel. These zones are deactivated when the vessel passes any of these buoys on its departure from port. United States Coast Guard and territorial law enforcement personnel will be on-scene to notify the public of these security zones.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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) because the zones are narrow in scope and are only in effect for limited periods of time when a cruise ship is in Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. "Small entities" include 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 because the zones are narrow in scope and are only in effect for limited periods of time when a cruise ship is in Port. Moreover, vessels may be allowed to enter the zones on a case-by-case basis with the permission of the Captain of the Port of San Juan.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under

FOR FURTHER INFORMATION CONTACT for assistance in understanding this rule.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Environmental

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2-1, paragraph 34(g), of Commandant Instruction M14475.1D that this rule is categorically excluded from further

environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships 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 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.

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 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, and 160.5; 49 CFR 1.46.

2. A new temporary section 165.T07-133 is added to read as follows:

§ 165.T-07-133 Security Zones; Charlotte Amalie Harbor, St. Thomas, USVI.

(a) *Regulated area.* Temporary moving security zones are established 50 yards around all cruise ships while they enter, depart, are moored at any pier or anchored in any anchorage in Charlotte Amalie Harbor. These temporary security zones are activated when cruise ships pass: St. Thomas Harbor green lighted buoy #3 in approximate position 18°19'19" North, 64°55'40" West when entering the port using St. Thomas Channel; red buoy #2 in approximate position 18°19'15" North, 64°55'59" West when entering the port using East Gregorie Channel; and red lighted buoy #4 in approximate position 18°18'16" North, 64°57'30" West when entering the port using West Gregorie Channel. These zones are deactivated when the cruise ship passes any of these buoys on its departure from port.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no person or vessel shall enter or remain in this security zone unless specifically authorized by the Captain of the Port San Juan, or a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port. The Captain of the Port will notify the public when a zone is activated and any changes in the status of the zones by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (157.1 Mhz) and by a Marine Safety Information Bulletin (MSIB) sent by facsimile and electronic mail.

(c) *Dates.* This section becomes effective at 6 p.m. on November 4, 2002 and will terminate at 11:59 p.m. on June 15, 2003.

Dated: November 4, 2002.

W.J. Uberti,

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

[FR Doc. 02-28837 Filed 11-12-02; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 07-02-132]

RIN 2115-AA97

Security Zone; San Juan, Puerto Rico

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is extending the effective period for the temporary final rule creating temporary moving

security zones 50 yards around all cruise ships entering or departing the Port of San Juan. Temporary fixed security zones are also established 50 yards around all cruise ships that are moored in the Port of San Juan. These security zones are needed for national security reasons to protect the public, ports, and waterways from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, San Juan, Puerto Rico or his designated representative.

DATES: This rule is effective from 11:59 p.m. on October 31, 2002 until 11:59 p.m. on April 30, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [CGD 07-02-132] and are available for inspection or copying at Marine Safety Office San Juan, Rodval Bldg, San Martin St. #90 Ste 400, Guaynabo, PR 00969 between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Chip Lopez, Marine Safety Office San Juan, Puerto Rico at (787) 706-2444.

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 a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to the public interest since the Captain of the Port of San Juan has determined that immediate action is needed to protect the public, ports and waterways of the United States near San Juan.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and written information via facsimile and electronic mail to inform mariners of this regulation.

Request for Comments

Although the Coast Guard has good cause to implement this regulation without a notice of proposed rulemaking, we want to afford the public the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of

these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07-02-132] indicate the specific section of this document to which each comment applies, and give the reason for each comment. 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 they 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 temporary final rule in view of them.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of San Juan, Puerto Rico, against cruise ships entering, departing and moored within this port. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks), 67 FR 59447 (Sept. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S and such disturbances continue to endanger such relations).

There may be Coast Guard, local police department or other patrol vessels on scene to monitor traffic and advise mariners of the restrictions in these areas. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port, San Juan, Puerto Rico.

On January 17, 2002 the Coast Guard published a similar temporary final rule in the **Federal Register** that established temporary moving and fixed security zones 50 yards around all cruise ships entering, departing or moored in the

Port of San Juan (67 FR 2330). That rule expired on February 28, 2002. The Captain of the Port issued another temporary final rule extending the security zones around cruise ships until June 15, 2002 (CGD07-02-015) which also expired. There is a current temporary final rule that was published on June 13, 2002 (67 FR 40608) which will expire on October 31, 2002. On June 5, 2002, the Captain of the Port published a notice of proposed rulemaking that proposed to make these security zones permanent zones (67 FR 42741). This temporary rule is necessary to ensure the security on the navigable waters while the Captain of the Port drafts a final rule.

The Captain of the Port has determined that this rule is necessary to protect the Port of San Juan from subversive activity. The Captain of the Port intends to issue a notice of proposed rulemaking in a separate document to be published in the **Federal Register** proposing to create permanent security zones around cruise ships in the Port of San Juan.

The security zone for a vessel entering the Port of San Juan is activated when the vessel is one mile north of the #3 buoy, at approximate position 18°28'17.19" N, 066° - 07'45.7" W. The zone for a vessel is deactivated when the vessel passes this buoy on its departure from the port. The Captain of the Port will notify the public of these security zones via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) and Marine Safety Information Bulletins via facsimile and the Marine Safety Office San Juan Web site at <http://www.msocaribbean.com>.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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) because vessels may be allowed to transit around these zones or enter the zones on a case by case basis with the authorization of the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the Coast Guard considered whether this rule would have a significant economic effect upon

a substantial number of small entities. "Small entities" include 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 because small entities may be allowed to transit around these zones or enter the zones on a case by case basis with the authorization of the Captain of the Port. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

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

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have

determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Environmental

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A “Categorical Exclusion Determination” is available in the docket for inspection or copying where indicated under **ADDRESSES**.

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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships 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 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.

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 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, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07–132 is added to read as follows:

§ 165.T07–132 Security Zones; Port of San Juan, Puerto Rico.

(a) *Regulated area.* Temporary moving security zones are established 50 yards around all cruise ships entering or departing the Port of San Juan. These moving security zones are activated when the subject vessel is one mile north of the #3 buoy at approximate position 18°28'17.19" N, 066°-07'45.7" W when entering the Port of San Juan and deactivated when the vessel passes this buoy on its departure from the Port of San Juan. Temporary fixed security zones are also established 50 yards around all cruise ships when they are moored in the Port of San Juan.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port, or a Coast Guard commissioned, warrant, or petty officer designated by him. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Dates.* This rule is effective at 11:59 p.m. on October 31, 2002 until 11:59 p.m. on April 30, 2003.

Dated: October 31, 2002.

D.A. Greene,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, San Juan.

[FR Doc. 02–28836 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 080–0060; FRL–7261–6]

Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a full disapproval of revisions to the Pinal County Air Quality Control District’s (PCAQCDs) portion of the Arizona State Implementation Plan (SIP). These revisions concern the incorporation by reference of external documents into the SIP. We are also finalizing a full approval of a revision to the PCAQCD portion of the Arizona SIP concerning definitions and a removal of rules previously approved in error. We are finalizing action on local rules under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on December 13, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA’s Region IX office during normal business hours. You can inspect copies of the submitted rule revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, AZ 85007.

Pinal County Air Quality Control District, Building F, 31 North Pinal Street (P.O. Box 987), Florence, AZ 85232.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415) 947–4118.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to EPA.

I. Proposed Action

On November 19, 2001 (66 FR 57914), EPA proposed a full disapproval of the

rules in Table 1 that were submitted for incorporation into the Arizona SIP.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
PCAQCD	1–2–110	Adopted Documents	07/29/98	10/07/98
PCAQCD	1–3–130	Adopted Documents	05/14/97	10/07/98
PCAQCD	3–1–020	Adopted Documents	05/14/97	10/07/98
PCAQCD	4–1–010	Adopted Documents	05/14/97	10/07/98

We proposed a full disapproval because we determined that these rules have limited enforceability due to relying on references to rules not contained in the SIP. Our proposed action contains more information on the rules and our evaluation.

On November 19, 2001 (66 FR 57914), EPA proposed a full approval of the rule in Table 2 that was submitted for incorporation into the Arizona SIP, because we believe it fulfills all relevant CAA requirements.

TABLE 2.—SUBMITTED RULE

Local agency	Rule No.	Rule Title	Amended	Submitted
PCAQCD	1–3–140	Definitions	07/29/98	10/07/98

On November 19, 2001 (66 FR 57914), EPA proposed the removal from the Arizona SIP of rules in Table 3 that were originally approved in error.

TABLE 3.—RULES FOR REMOVAL FROM THE SIP

[Previously Approved on April 9, 1996 (61 FR 15717), as Clarified on December 20, 2000 (65 FR 79742)]

Local agency	Rule No.	Rule title	Amended	Submitted
PCAQCD	1–3–130	Adopted Documents	10/12/95	11/27/95
PCAQCD	3–1–020	Adopted Documents	06/29/93	11/27/95

We proposed removing these rules from the SIP because we determined that these rules have limited enforceability due to relying on references to rules not contained in the SIP. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA’s proposed action provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a), EPA is finalizing a full disapproval of Rules 1–2–110, 1–3–130, 3–1–020, and 4–1–010. As a result, these rules will not be in the Arizona SIP and sanctions will not be imposed under section 179 of the CAA as described in 59 FR 39832 (August 4, 1994).

As authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is finalizing a full approval of Rule 1–3–140. This action incorporates the submitted rule into the Arizona SIP.

As authorized in section 110(k)(6), EPA is finalizing the removal from the Arizona SIP of Rules 1–3–130 and 3–1–020.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled “Regulatory Planning and Review.”

B. Executive Order 13211

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled 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.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government.” Under 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. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

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

E. 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 final 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.

F. Regulatory Flexibility Act

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.

EPA’s disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA’s disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. 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 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 acts on 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.

H. 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.

EPA believes that VCS are inapplicable to today’s action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

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

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2003. 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 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, Incorporation by reference, Intergovernmental relations,

Reporting and recordkeeping requirements.

Dated: August 2, 2002.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(84)(i)(G), (c)(84)(i)(H), and (c)(107) to read as follows:

§ 52.120 Identification of plan.

* * * * *

- (c) * * *
- (84) * * *
- (i) * * *

(G) Previously approved on April 9, 1996 in paragraph (c)(84)(i)(A) of this section and now deleted without replacement, Rule 3–1–020.

(H) Previously approved on April 9, 1996 in paragraph (c)(84)(i)(D) of this section and now deleted without replacement, Rule 1–3–130.

* * * * *

(107) Amended rules for the following agency were submitted on October 7, 1998 by the Governor’s designee.

(i) Incorporation by reference.

(A) Pinal County Air Quality Control District.

(1) Rule 1–3–140, adopted on June 29, 1993 and amended on July 29, 1998.

* * * * *

3. Section 52.133 is amended by adding paragraphs (f) and (g) to read as follows:

§ 52.133 Rules and regulations.

* * * * *

(f) Rules 1–3–130 and 3–1–020 submitted on November 27, 1995 of the Pinal County Air Quality Control District regulations have limited enforceability because they reference rules not contained in the Arizona State Implementation Plan. Therefore, these rules are removed from the Arizona State Implementation Plan.

(g) Rules 1–2–110, 1–3–130, 3–1–020, and 4–1–010 submitted on October 7, 1998 of the Pinal County Air Quality Control District regulations have limited enforceability because they reference rules not contained in the Arizona State

Implementation Plan. Therefore, these rules are disapproved.

[FR Doc. 02–28351 Filed 11–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[SC–041, 046–200211(a); FRL–7406–7]

Approval and Promulgation of Implementation Plans; South Carolina; Adoption of Revision Governing Credible Evidence and Removal of Standard 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the State Implementation Plan (SIP) submitted on October 1, 2002, by the State of South Carolina, Department of Health and Environmental Control (Department). This revision consisted of an addition to Regulation 61–62.1, Definitions and General Requirements, entitled “Section V—Credible Evidence.” The submission of Section V—Credible Evidence by South Carolina is to meet the requirements for credible evidence set forth in EPA’s May 23, 1994, SIP call letter. EPA is also approving a correction to the SIP regarding removal of Standard 3 “Emissions from Incinerators” from the SIP as requested by the State of South Carolina.

DATES: This direct final rule is effective January 13, 2003 without further notice, unless EPA receives adverse comment by December 13, 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: Written comments should be addressed to: Sean Lakeman, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Copies of the State submittal is 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. Sean Lakeman, 404/562–9043. South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201–1708.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman at 404/562–9043, or by

electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. Background On Credible Evidence
- II. South Carolina’s Response to Credible Evidence
- III. Removal of Standard 3
- IV. Final Action
- V. Administrative Requirements

I. Background On Credible Evidence

On October 22, 1993, the EPA published a **Federal Register** document proposing an Enhanced Monitoring Program Rule. In that document, the EPA proposed both new regulations and amendments to several existing air pollution program regulations. To address the revisions to the Clean Air Act (CAA) regarding the use of any credible evidence the EPA issued a SIP call to all states in a letter dated May 23, 1994. The purpose of this letter was to require the states to revise their SIP to allow for the use of enhanced monitoring as a means of establishing compliance and “any credible evidence” to prove violations. A Federal Implementation Plan (FIP) was to be promulgated if the states failed to correct the deficiencies in the SIP by June 30, 1995. However, during the time between which the Enhanced Monitoring Program Rule was proposed and the FIP was to be in place, EPA separated the enhanced monitoring rule into two new parts: “any credible evidence” and “compliance assured monitoring” (CAM); and promulgated them in separate **Federal Register** documents. The final rule for “any credible evidence” was promulgated on February 24, 1997.

II. South Carolina’s Response to Credible Evidence

In response to the May 23, 1994, SIP call, the Department submitted a revision to South Carolina’s SIP on October 1, 2002. This revision consisted of the addition of Section V—Credible Evidence to Regulation 61–62.1 Definitions and General Requirements. The purpose of Section V regarding the demonstration of compliance or noncompliance, or the certification of compliance is:

- to clarify that any credible evidence can be used,
- to eliminate any potential ambiguity in language regarding exclusive reliance on reference test methods, and
- to curtail language that limits the types of testing or monitoring data that may be used. Section V specifically allows for the use of any credible evidence “in the determination of non-

compliance by the Department or for compliance certification by the owners or operators of stationary sources." In addition, Section V allows for "credible evidence" to be used to determine whether or not a violation has or is occurring with respect to any standard within the plan.

III. Removal of Standard 3

In a letter dated May 5, 2000, South Carolina requested the removal of Standard 3 "Emissions from Incinerators" from the SIP. EPA has determined that South Carolina's Standard 3 "Emissions from Incinerators" was erroneously incorporated into the SIP. EPA is removing this rule from the approve South Carolina SIP because the rule does not have a reasonable connection to the National Ambient Air Quality Standard (NAAQS) and related air quality goals of Section 110 of the Clean Air Act (CAA). The intended effect of this correction to the SIP is to make the SIP consistent with the requirements of the CAA, as amended in 1990, regarding EPA action on SIP submittals and SIPs for national primary and secondary ambient air quality standards.

IV. Final Action

After a thorough review of the submittal, the EPA has found that the October 1, 2002, submittal is adequate to meet the credible evidence requirements set forth in the May 1994, SIP call. EPA is also approving a correction to the SIP regarding removal of Standard 3 "Emissions from Incinerators" from the SIP as requested by the State of South Carolina.

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 January 13, 2003 without further notice unless the Agency receives adverse comments by December 13, 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 January 13, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. 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 January 13, 2003. 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, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 1, 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 PP—South Carolina

2. In § 52.2120 the table in paragraph (c) is amended by adding a new entry

under Regulation No. 62.1 after Section III for “Section V Credible Evidence” and removing the entry for “Standard No. 3 Emissions from Incinerators” to read as follows:

§ 52.2120 Identification of plan.

* * * * *
(c) * * *

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	Federal register notice
Regulation No. 62.1	Definitions, Permits Requirements and Emissions Inventory			
* * * * *				
Section V	Credible Evidence	07/27/01	01/13/03	67 FR 68767
* * * * *				

* * * * *
[FR Doc. 02–28698 Filed 11–12–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–7408–2]

Designation of Areas for Air Quality Planning Purposes; Redesignation of Particulate Matter Unclassifiable Areas; Redesignation of Hydrographic Area 61 for Particulate Matter, Sulfur Dioxide, and Nitrogen Dioxide; State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document, EPA is approving a request from the State of Nevada, pursuant to section 107(d) of the Clean Air Act (Act), to redesignate the current single unclassifiable area for particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM–10) into numerous individual areas to be consistent with the area definitions for other pollutants. EPA is also approving a State-requested subdivision of one of those individual areas, referred to as hydrographic area 61 (Boulder Flat), into two areas. EPA’s approval of these requests establishes hydrographic areas as the section 107(d) unclassifiable areas for PM–10 and replaces hydrographic area 61 with two new section 107(d) areas for PM–10, sulfur dioxide (SO₂), and nitrogen dioxide (NO₂): upper area 61 and lower area 61. In this action, EPA is also

deleting certain total suspended particulate (TSP) area designations that are no longer necessary. EPA proposed these actions in the **Federal Register** on April 30, 2002 (67 FR 21194). EPA received comments from several commenters on our proposed actions. After carefully reviewing and considering the issues raised by the commenters, EPA is finalizing our actions as proposed.

EFFECTIVE DATE: This action will become effective on December 13, 2002.

ADDRESSES: Copies of the State’s submittal, and other supporting documentation relevant to this action, are available for inspection during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region 9, Air Division, Permits Office (AIR–3), at (415) 972–3974 or rios.gerardo@epa.gov.

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

Table of Contents.

- I. Background.
- II. Comments received by EPA on our proposed rulemaking and EPA’s responses.
- III. EPA’s final action.
- IV. Administrative requirements.

I. Background

Pursuant to the redesignation procedures of section 107(d)(3) of the Clean Air Act (Act), States may request EPA’s approval of air quality planning area redesignations, including boundary changes to existing areas. The State of Nevada submitted two such section 107(d) redesignation requests to EPA.

One request (dated April 16, 2002) was for EPA to redesignate the existing PM–10 section 107 unclassifiable area by establishing hydrographic areas within the State as the PM–10 unclassifiable areas. The State’s other request (dated November 6, 2001) was to split an existing PSD baseline area, hydrographic area 61, into two parts: upper area 61 and lower area 61.

On April 30, 2002, EPA proposed to approve the requests made by the State of Nevada, pursuant to section 107(d) of the Act. *See* 67 FR 21194. Today’s rule finalizes our approval of these two requests from the State of Nevada. EPA’s approval of these requests establishes hydrographic areas as the section 107(d) unclassifiable areas for PM–10 and replaces hydrographic area 61 with two new section 107(d) areas for PM–10, sulfur dioxide (SO₂), and nitrogen dioxide (NO₂): upper area 61 and lower area 61. In this action, EPA is also deleting certain total suspended particulate (TSP) section 107(d) area designations because they are no longer necessary.

II. Comments Received by EPA on Our Proposed Rulemaking and EPA’s Responses.

EPA received seven sets of comments on our proposal to approve the State of Nevada’s 107(d) redesignation requests. Provided below is a summary of the significant comments, and EPA’s responses thereto. Complete copies of the submitted comments are available for inspection during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105.

Comment 1: One commenter claims that EPA’s rule will result in significant

deterioration of air quality in designated attainment/unclassifiable areas for PM-10 in violation of the PSD program requirements. The commenter alleges that PSD increments will be violated by EPA's proposed action. Their allegation is based on a belief that the State is a single, triggered, PSD baseline area for PM-10 and that EPA's action would untrigger most of the State.

Response: EPA is promulgating this rule because we do not believe that the rule will result in significant deterioration of air quality nor that PSD increments will be violated. As such, we disagree with the commenter's claims. The comment, which relates to EPA's proposal to approve the State's request to redesignate the existing PM-10 section 107 unclassifiable area by establishing hydrographic areas within the State as the PM-10 unclassifiable areas, is based on the incorrect belief of the commenter that prior to EPA's present action, the State consisted of a single PSD baseline area for PM-10. Prior to EPA's action, as the Agency clarified in our March 19, 2002 final rule (see 67 FR 12474), the State's 253 hydrographic areas had already been established as the PSD baseline areas for particulate matter (originally for the indicator pollutant TSP, then for PM-10, even though there was a single PM-10 section 107 unclassifiable area). Today's rule aligns the section 107 area definitions for PM-10 with the established hydrographic area approach the State has used for almost twenty years in implementing the PSD program for particulate matter. Today's rule has no effect on PSD baseline areas for PM-10 in the State, other than in hydrographic area 61, where the rule proposes to split a single area into two.

Comment 2: One commenter notes that the PM-10 redesignation request and the request to subdivide hydrographic area 61 were submitted by Allen Biaggi, Administrator of the Nevada Division of Environmental Protection, rather than from the Governor of Nevada. The commenter concludes that since EPA's regulations require that the submittals be made by the Governor, the requests are unlawful and cannot be acted upon by EPA.

Response: The commenter is correct that the redesignation requests were submitted by Allen Biaggi, Administrator of the Nevada Division of Environmental Protection ("NDEP"), rather than by the Governor of Nevada. NDEP is one of the divisions within the State Department of Conservation and Natural Resources ("Department"). Nevada law authorizes the Department to take all action necessary or appropriate to secure to Nevada the

benefits of the Federal Clean Air Act. See Title 40 of the Nevada Revised Statutes, Chapter 445B, sections 445B.125, 445B.205, and 445B.135. The Department is a State administrative Agency overseen by the Governor. Therefore, EPA can reasonably assume that the redesignation request has been made with the full knowledge and endorsement of the Governor of Nevada. Thus, Allen Biaggi acted lawfully in submitting the State's redesignation requests to EPA on behalf of the Governor of Nevada.

Comment 3: One commenter argues that neither Nevada nor EPA provide the required documentation that the 253 unclassifiable areas would not intersect the area of impact of any major stationary source or modification that has established the minor source baseline date.

EPA Response: EPA's definition of "baseline area" at 40 CFR 52.21(b)(15) notes that redesignated areas "cannot intersect or be smaller than the area of impact of any major stationary source or major modification which" establishes a minor source baseline date. Thus, if a State's redesignation was establishing new or different baseline areas, then documentation would be needed to demonstrate that the newly created baseline areas meet the federal regulatory definition for such areas by not intersecting or being smaller than the area of impact of any major stationary source or major modification which established a minor source baseline date. However, Nevada's request to create 253 PM-10 section 107 unclassifiable areas does not establish new or different baseline areas for PM-10. As EPA explained in our March 19, 2002 final rule, the PM-10 PSD baseline areas in the State are the hydrographic areas and have been for many years.¹ The State's implementation of the federal PSD program has been based on the hydrographic area approach since EPA delegated the program in 1983. Thus, contrary to the commenter's assertion, our action is not establishing a new or revised state-wide map of PSD baseline areas for PM-10, and it is not necessary for the State or EPA to provide the documentation requested by the commenter. As an example, Sierra Pacific Power's submittal of a complete PSD permit application on March 11, 1994 for Tracy Generating Station

¹ In 1993, EPA revised its PSD regulations to address the transition from TSP to PM-10. Among other changes in our 1993 rule related to PSD, EPA retained the existing TSP baseline areas (*i.e.*, the hydrographic areas in the State of Nevada) as part of the program for implementing the newly-promulgated PM-10 increments. See 58 FR 31622; June 3, 1993.

established the PM-10 minor source baseline date in hydrographic area 83. EPA's action today has no effect on the status of this basin, *i.e.*, the basin remains triggered with the same minor source baseline date.

Comment 4: One commenter alleges that EPA's action would untrigger the minor source baseline date for PM-10 in the proposed lower basin 61 (which should have been triggered by Barrick gold mine), and in many key areas of the State, such as Jarbidge Wilderness, the State's only mandatory Class I area, and on many Indian reservations and colonies. The commenter also states that EPA failed to conduct the required consultation with the Tribes who would be affected because minor source baseline dates on tribal reservations will be eliminated.

EPA Response: In accordance with EPA's PSD program regulations at 40 CFR 52.21, the PSD minor source baseline date in a given baseline area is established by submittal of the first complete PSD permit application in that area. Once the minor source baseline date has been established in an area, all sources consume increment in that area. However, in some cases, a larger area where the minor source baseline date has been established (or "triggered") can be broken up into two or more smaller areas and such action could potentially result in the elimination of the minor source baseline date in one or more of the smaller areas ("untrigger" the areas) which subsequently do not contain the PSD source.

EPA disagrees that today's rule would untrigger the minor source baseline date for PM-10 (or any other pollutant) in lower basin 61, the Class I-designated Jarbidge Wilderness, or on any Indian reservations or colonies in the State. EPA's action will not untrigger any minor source baseline dates in the State of Nevada. As with Comment 1, this comment is based on the incorrect belief of the commenter that prior to EPA's present action, the State consisted of a single PSD baseline area for PM-10 and that the effect of our action would be to create new baseline areas for PM-10, thereby untriggering numerous areas of the State where the minor source baseline date has already been established. As previously explained, EPA's current rule has no effect at all on PSD baseline areas for PM-10 in the State, other than in hydrographic area 61. In hydrographic area 61, our action will split a single PSD baseline area into two PSD baseline areas. However, the minor source baseline date has not been established in hydrographic area 61, so our action does not untrigger any established minor source baseline date.

EPA disagrees with the commenter's claim that Barrick gold mine has triggered the minor source baseline date in hydrographic area 61. Although Barrick gold mine is a "major source" located in hydrographic area 61, it has not been subject to PSD permitting requirements.² As previously noted, the minor source baseline date in a given baseline area is established by submittal of the first PSD permit application in that area. Neither Barrick gold mine nor any other source in hydrographic area 61 has submitted a PSD permit application, so the minor source baseline date has not been established in that area.

Finally, EPA disagrees that the Agency was required to consult with Indian tribes regarding the effect of this rulemaking. EPA concluded that the rule will not have a substantial direct effect on one or more Indian tribes, in part because the rule will not untrigger the minor source baseline date within any tribal boundary, thus we did not initiate a formal consultation process.

Comment 5: One commenter claims that EPA did not consider the impact of the proposed PM-10 redesignation on the State's ability to attain and maintain the new PM-2.5 NAAQS. The commenter states that such consideration is required in light of EPA's December 1997 guidance on implementation of the new standards, because the proposed action would relax the State's PSD program and allow increased degradation of air quality.

EPA Response: EPA did not consider the impact of the proposed PM-10 redesignation on the State's ability to attain and maintain the new PM-2.5 NAAQS because the rule will not have any effect on the State's implementation of the new standard. Our action does not relax the State's PSD program and we do not believe it will result in significant degradation of air quality in the State. Other than in hydrographic area 61, EPA's action will have no effect on the State's implementation of the PSD program. In hydrographic area 61, the only effect will be that a single untriggered PM-10 PSD baseline area will become two separate unclassifiable/attainment areas (constituting two untriggered PSD baseline areas for PM-10). Subdividing one untriggered PSD baseline area into two untriggered PSD baseline areas conforms with EPA's

existing regulatory criteria for such actions and is consistent with relevant statutory requirements under the Clean Air Act.

Comment 6: One commenter argues that EPA cannot rely upon the March 19, 2002 final rule as the sole basis for approving the State's PM-10 redesignation request because EPA never approved the use of hydrographic areas for PM-10. The commenter also argues that the claim that Nevada has relied upon the hydrographic area approach for managing particulate emissions in Nevada is unsupported by fact.

EPA Response: EPA is not relying upon the March 19, 2002 final rule as the basis for approving Nevada's PM-10 redesignation request. While EPA does substantially base its proposed approval of the State's PM-10 redesignation request on the existing hydrographic area approach used by the State to manage particulate matter emissions, this approach was not effectuated by EPA's March 19, 2002 rule. EPA's March 2002 rule, rather than establishing hydrographic areas as the PSD baseline areas for particulate matter, merely clarified that several previous Agency rulemakings had already established hydrographic areas as the PSD areas. Moreover, despite the commenter's claim to the contrary, Nevada has an almost 20-year history of using hydrographic areas as the geographic basis for PSD program implementation. All of the PSD permits issued by the State (and the increment analyses conducted in support of these permits) have relied upon the hydrographic area approach for determining whether sources were locating in areas where the minor source baseline date had already been established or whether the new source was initially triggering the area. Some examples of permit-related documents which demonstrate the State's reliance on the hydrographic area scheme have been added to the administrative record for this rulemaking.

Lastly, since publication of the March 19, 2002 rule discussed above, EPA has discovered two additional documents which lend further support to the action EPA took: (1) EPA's final rule reaffirming the area boundaries established in our original March 3, 1978 designation of nonattainment, attainment, and unclassifiable areas in Nevada under section 107(d) of the 1977 CAA Amendments; and (2) a letter from Allyn Davis, Director, Air & Hazardous Materials Division, EPA—Region 9, to Dick Serdoz, Air Quality Officer, Nevada Department of Conservation and Natural Resources, dated May 8, 1979,

concerning the EPA final rule affirming the area designations. See 43 FR 8962 (March 3, 1978) for the original area designations and see 44 FR 16388, at 16391 (March 19, 1979) for the rule reaffirming the boundaries for areas in Nevada. These documents have also been added to the administrative record for this rulemaking.

Comment 7: One commenter argues that since the March 19, 2002 rule is being challenged in the 9th Circuit Court of Appeals, EPA should not rely on the rule as the basis for approving Nevada's PM-10 redesignation request. Instead, EPA must assume that the terms "rest of state" and "entire state" constitute single attainment/unclassifiable areas for which the minor source baseline date has been triggered until such time as the issue is resolved by the Court.

Response: On May 17, 2002, Reno-Sparks Indian Colony and Great Basin Mine Watch ("petitioners") filed a petition for review in the U.S. Court of Appeals for the Ninth Circuit (Docket # 02-71503) challenging those portions of EPA's final rule (parts I and II) clarifying the tables in 40 CFR 81.329 that identify the attainment and unclassifiable areas within the State of Nevada for TSP, SO₂, and NO₂ and clarifying the PSD baseline areas for PM-10. The petitioners reject EPA's characterization of the action taken on March 19, 2002 as a clarification of the existing regulatory framework and contend that EPA's action represents an unlawful redesignation of a single area referred to as "rest of state" into numerous subareas under section 107(d) of the Clean Air Act. The petition for review notwithstanding, the Agency continues to believe that its decision to clarify the meaning of the term "rest of state" in 40 CFR 81.329 as Nevada's hydrographic areas is amply supported by the record and that the decision to publish the March 19th rule as a technical correction (*i.e.*, without notice and comment) is consistent with the Administrative Procedure Act.

EPA does not agree that the Agency must interpret the terms "rest of state" and "entire state" as constituting single attainment/unclassifiable areas for which the minor source baseline date has been triggered until such time as the issue is resolved by the Ninth Circuit Court of Appeals. As we have previously explained, and as clarified in the March 19, 2002 rulemaking, the effect of EPA's prior regulatory actions (finalized long ago) was to establish hydrographic areas as the PSD baseline areas in the State of Nevada. The current legal challenge to EPA's March 19, 2002 rule has no effect on the status of the

² While it is accurate that only major sources are subject to PSD permitting requirements, a source is not required to obtain a PSD permit merely because it is a major source. PSD permits are only required for construction of new major sources and for existing major sources making a modification that increases emissions above designated "significance" thresholds. See 40 CFR 52.21(i).

rule, nor, more importantly, on the already established use of hydrographic areas as air quality planning areas for purposes of implementing the PSD permitting program in Nevada. EPA will continue to interpret the terms “rest of state” and “entire state” as referring to the hydrographic areas in the State that are not designated as nonattainment. If this issue is ultimately resolved by the Courts in a manner that is inconsistent with EPA’s current approach, then we will take all necessary steps at that time to remedy the situation, including, if necessary, reassessing the appropriateness of this rulemaking.

Comment 8: One commenter claims that because Nevada does not have an approved State Implementation Plan (SIP) that meets the requirements of CAA sections 160 through 165, then in order for EPA to redesignate Nevada’s PM-10 unclassifiable area into hydrographic areas, and to redesignate hydrographic area 61, the Agency must revise Nevada’s Federal Implementation Plan (FIP).

Response: Neither EPA’s action to redesignate Nevada’s PM-10 unclassifiable area into hydrographic areas nor EPA’s action to subdivide hydrographic area 61 from a single unclassifiable area into two unclassifiable areas represents, nor requires, a revision to Nevada’s SIP or FIP. Rather these are EPA actions to promulgate the boundaries of designated attainment/unclassifiable areas in the State of Nevada.

As noted by the commenter, and reflected at 40 CFR 52.1485(a), Nevada does not have an approved State Implementation Plan (SIP) that meets the requirements of CAA sections 160 through 165. However, as further clarified at 40 CFR 52.1485(b), “the provisions of § 52.21(b) through (w) are incorporated and made a part of the applicable State plan for the State of Nevada except for that portion applicable to the Clark County Health District.” See 45 FR 52676, at 52741 (August 7, 1980) and 47 FR 26620 (June 21, 1982). (Sections 52.21(b) through (w) in part 52 of title 40 of the Code of Federal Regulations consist of the Federal PSD regulations.) Thus, the Federal PSD regulations, codified at 40 CFR 52.21, represent EPA’s FIP for Nevada (for purposes of implementing the PSD program).

However, while the part 52 Federal PSD regulations refer to section 107 attainment and unclassifiable areas, they do not incorporate the section 107 area designations by reference. Thus, the regulatory changes effected by today’s rule are located at 40 CFR 81.329, which describes the “Section

107 Attainment Status Designations” for Nevada; no changes are being made to 40 CFR 52.21 or to 40 CFR part 52, subpart DD—Nevada (Nevada’s SIP). Since EPA is making no changes to these regulatory sections, today’s action does not require a revision to the Nevada SIP or FIP.

Comment 9: One commenter asserts that EPA’s action to delete certain TSP attainment and unclassifiable areas from 40 CFR 81.329 is unlawful because the Agency’s regulations state that “[a]ny baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments. * * *” The commenter also questions why EPA is taking action to delete TSP area designations given that the State of Nevada did not make a formal request for such action.

Response: The Agency is not acting unlawfully in deleting the listing of certain TSP attainment and unclassifiable area designations from 40 CFR 81.329. Deletion of the listing of certain TSP attainment and unclassifiable areas does not eliminate any baseline area established originally for the TSP increments. Rather, the baseline areas originally established for the TSP increments (*i.e.*, the hydrographic areas) “remain in effect and * * * apply for purposes of determining the amount of available PM-10 increments.* * *” (40 CFR 52.21(b)(15)(iii)) As we explained in the proposed rule:

In our 1993 PSD rule, we indicated that the replacement of the TSP increments with PM₁₀ increments (which operate independently from the section 107 area designations for TSP) negates the need for the TSP attainment or unclassifiable area designations to be retained. We also indicated that we would delete such TSP designations in 40 CFR part 81 upon the occurrence of one of the following events: EPA’s approval of a State’s revised PSD program containing the PM₁₀ increments; EPA’s promulgation of the PM₁₀ increments into a State’s SIP where the State chooses not to adopt the increments on their own; or EPA’s approval of a State’s request for delegation of PSD responsibility under 40 CFR 52.21(u). See 58 FR 31622, 31635 (June 3, 1993). [Emphases added]

Thus, the listing of designated TSP attainment and unclassifiable areas in Nevada became unnecessary upon the effective date of the Agency’s 1993 rule in areas where EPA had delegated the PSD program (*i.e.*, the entire State of Nevada except for Clark County).³

³The PSD program delegation does not apply in Clark County, Nevada. Clark County administers an EPA-approved PSD program (rather than

Finally, although the commenter is correct that the State of Nevada did not make a formal request to EPA to eliminate their unnecessary TSP area designations, such a request was not needed for EPA to act. EPA had already noted, in our 1993 rulemaking, that the Agency’s intention was to delete the TSP area designations in 40 CFR part 81 once they were no longer necessary. Moreover, section 107 of the Act authorizes EPA to eliminate a section 107 designation for particulate matter (measured as TSP), when “the Administrator determines that such designation is no longer necessary.” See CAA section 107(d)(4)(B). In today’s action, the Agency is merely following through on a prior commitment to eliminate TSP designations based on a determination that they are no longer necessary. EPA’s action in this regard is consistent with prior rulemakings by EPA to delete TSP area designations in other States. See, *e.g.*, 59 FR 28480 (June 2, 1994) (EPA action to delete TSP area designations in response to a State’s request to redesignate TSP nonattainment areas to attainment).

Comment 10: Two commenters question whether the Agency’s redesignation of hydrographic area 61 is in the public’s interest because, they contend, the action merely splits an area into two pieces so that the air pollution in the region can be doubled and EPA’s PSD requirements can be avoided. They further assert that continued subdivision of hydrographic areas to allow sources to avoid the PSD program will pollute the entire State.

Response: EPA does not agree that the effect of splitting hydrographic area 61 into upper and lower basins will be to allow air pollution in the region to be doubled. Area 61 is currently designated attainment or unclassifiable for all criteria pollutants and the minor source baseline date has not been triggered for any pollutant. Thus, the “allowable” amount of air pollution, and consequent level of air quality degradation, is presently constrained only by the NAAQS. After area 61 is split into upper and lower basins, the “allowable” amount of air pollution and level of air quality degradation in each of the two basins will also be constrained only by the NAAQS (*i.e.*, the overall level of air quality protection will be exactly the same) unless and until a PSD permit application triggers one or both areas. The commenter does not provide any justification for their contention that the

administering a delegated federal PSD program) for PSD sources in Clark County. Therefore, as noted in our proposal, EPA is not deleting the TSP attainment and unclassifiable area designations in Clark County at this time.

effect of EPA's action in area 61 will be a doubling of the allowable air pollution in the region. However, it is true that if one area is triggered before the other, then there could be additional minor growth in the baseline of the untriggered area relative to the newly triggered area, because the triggered area would then be constrained by the PSD increments.

In addition, the commenter's concern that EPA's approval of the subdivision of area 61 portends a larger state-wide effort to split hydrographic areas is unwarranted. The Agency has not received any other request for such action by Nevada. Moreover, EPA's actions on requests for area redesignations under section 107(d) that affect PSD baseline areas are handled on a case-by-case basis in light of relevant statutory and regulatory requirements. The Agency's approval of the State's request to subdivide hydrographic area 61 does not assure EPA approval of any potential future requests the State might make to redesignate other existing section 107(d) attainment or unclassifiable areas, if the circumstances of the request, including any impact on the State's ability to effectively manage air quality, warrants denial.

Comment 11: Two commenters question the rationale provided by EPA for splitting area 61. They claim that the upper and lower basins are not self-contained, that the split will not promote the State's ability to effectively manage their air quality, and that Nevada has only limited and supervised authority to manage EPA's PSD program, so it is extremely unlikely that the redesignation would reduce the complexity of Nevada's PSD program. They further allege that the objective of the hydrographic area 61 redesignation, based on articles in the Nevada Press, appears to be to ensure that a new source in lower basin 61 (*i.e.*, a proposed power plant) will not trigger the PSD minor source baseline date in upper basin 61 where there are mining operations. Thus, they claim, EPA's approval of the redesignation would help the mines circumvent PSD requirements and is inconsistent with the goals and intent of the PSD provisions of the Act.

Response: As stated in our proposed rule, EPA is approving Nevada's request to subdivide hydrographic area 61 into upper and lower basins because the request complies with the existing federal standards for approval of section 107(d) redesignations and we do not believe the redesignation will interfere with the State's ability to manage air quality. As we further explained in our proposal, EPA's policy is to provide

States with a fair degree of autonomy to balance air quality management with economic planning considerations. It is not necessary for EPA to make a finding that Nevada's redesignation request will improve air quality management by the State; rather, the Agency has to ensure that the request complies with the regulatory standards for section 107(d) redesignations and that the redesignation will not interfere with the State's management of air quality. Our proposed rule clearly describes how the State's request to split hydrographic area 61 complies with the Federal standards for section 107(d) and PSD baseline area redesignations, and provides the Agency's basis for concluding that the redesignation will not interfere with the State's management of air quality. See 67 FR 21194, at 21196–21197 (April 30, 2002).

Comment 12: One commenter claims that EPA has not shown that hydrographic areas are PSD baseline areas. They assert that EPA's notice aims to "replace the single unclassifiable area designated for Nevada for PM-10 with 253 unclassifiable areas" which, they contend, disagrees with a footnote in the proposal saying that these areas are "already established as the PSD baseline areas."

Response: The Federal PSD regulations define "baseline area" in terms of 107(d) attainment or unclassifiable areas. See 40 CFR 52.21(b)(15) and 40 CFR 51.166(b)(15). However, as EPA explained in our proposal, the transition from TSP to PM-10 resulted in a difference between the section 107(d) and PSD baseline areas for PM-10 in Nevada. Specifically, the TSP baseline areas (based upon the State's hydrographic areas) became PM-10 baseline areas pursuant to our 1993 rulemaking; however, the State of Nevada has a single section 107(d) unclassifiable area for PM-10. Thus, our current action represents another step in the transition from TSP to PM-10. This step re-aligns the section 107(d) areas with the PSD baseline areas by approving a request for establishing hydrographic areas, which had been the basis for TSP attainment and unclassifiable areas pursuant to our 1978 rulemaking, as the attainment and unclassifiable areas under section 107(d) of the Act for PM-10.

Comment 13: One commenter argues that even if EPA had the intention of establishing 253 hydrographic areas as section 107(d) areas in 1978, that is not what the Agency actually did, nor is it what the Agency codified in the CFR. The commenter asserts that the public has been misled by what is in the CFR

as opposed to what EPA is now saying it meant, and that all of this was done under the guise of a "technical correction" with no opportunity for public comment.

Response: Our March 19, 2002 clarifying rule indicates that, in our 1978 rulemaking establishing the first nonattainment, attainment and unclassifiable areas, we stated that some States provided long lists of individual attainment and unclassifiable areas and that we were not listing each such area for those States. See 67 FR 12474, at 12475. Through our 1978 rulemaking, we did in fact designate those areas as individual attainment and unclassifiable areas for the purposes of section 107(d), but used the short-hand term "rest of state" or "entire state" to denote them rather than listing each separate area. The commenter did not provide any evidence to the contrary. Moreover, at the time of our 1978 rulemaking, there was no compelling reason for EPA to list each and every attainment and unclassifiable area. The need for specificity arose in 1980 with our promulgation of changes to the PSD regulations that established the link between PSD baseline areas and section 107(d) areas. Since 1978, hydrographic areas have represented the 107(d) attainment and unclassifiable areas, and the tables in 40 CFR 81.329 have continued to describe the areas for Nevada using the short-hand terms, "rest of state" and "entire state." Our March 2002 rule added footnotes clarifying the connection between "rest of state"/"entire state" and hydrographic areas.

Comment 14: One commenter notes that Nevada's request for the PM-10 107(d) redesignation was made on April 16, 2002 and that EPA has 18 months to act on the request (until October 2003). The commenter questions why EPA is taking action so quickly, especially when the Agency is currently evaluating the existing regulatory and policy framework for PSD baseline area redesignations.

Response: EPA's action approving the State's April 16, 2002 request to redesignate the single PM-10 unclassifiable area in Nevada into multiple unclassifiable areas (based on hydrographic areas) under section 107(d), is simply another step in the regulatory transition from TSP to PM-10. This particular type of section 107(d) action does not create new PSD baseline areas because the PM-10 baseline areas were established by operation of law through our 1993 PSD rulemaking as the PSD baseline areas originally established for TSP. (See our March 19, 2002 Technical Correction at

67 FR 12474 for further explanation.) Further, because this type of section 107(d) action does not create new PSD baseline areas, it is not the type that could theoretically be affected by a change in the regulatory criteria for evaluating PSD baseline area redesignations.

In contrast, EPA's action approving the State's November 6, 2001 request to redesignate hydrographic area 61 does create new PSD baseline areas and is the type that could potentially be affected by a change in the regulatory criteria. EPA's approval of this request is occurring roughly one year after the State of Nevada submitted its redesignation request related to area 61. EPA has 18 months under the Act to take final action on State redesignation requests, and the re-evaluation of the regulatory criteria is not likely to be completed by May 6, 2003 (18 months from the November 2001 request); thus, EPA can not wait and must finalize action based on the current statutory and regulatory criteria.

Comment 15: Several commenters urged EPA to expeditiously finalize our approval of Nevada's area 61 redesignation request.

Response: Section 107(d)(3)(D) allows EPA 18 months from receipt of a complete State redesignation submittal to approve or deny such redesignation. In today's notice, EPA is finalizing its proposal to approve Nevada's November 6, 2001 request to redesignate area 61 into two areas. In so doing, EPA is acting well within the 18-month review period allowed by the Act.

Comment 16: One commenter argues that redesignation of area 61 is necessary because of the way in which EPA's PSD program forces areas with air quality better than the National Ambient Air Quality Standards (NAAQS) to further limit source emissions of PM-10, NO₂ and SO_x to levels at only 20–35% of the NAAQS. The commenter asserts that these more stringent limits, the PSD increments, were set by EPA as a simple percentage of the NAAQS and are not health or welfare-based.

Response: Since 1967, Congress has declared that one of the purposes of the Clean Air Act is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." See section 101(b)(1) of the Act. Originally, EPA did not interpret the 1967 Act as granting authority to the Agency to promulgate regulations designed to prevent "significant deterioration" of air quality in those areas which have air that already is cleaner than the NAAQS. However, EPA's narrow interpretation

of its own authority was overruled by the Court in *Sierra Club v. Ruckelshaus*, 344 F. Supp. 253 (D.D.C. 1972), aff'd per curiam, 4 E.R.C. 1815 (D.C. Cir. 1972), aff'd by an equally divided Court, sub nom. *Fri v. Sierra Club*, 412 U.S. 541, 37 L. Ed. 2d 140, 93 S. Ct. 2770 (1973). Pursuant to Court order, EPA promulgated the initial PSD regulations in 1974 and these early PSD regulations identified increments for total suspended particulate and sulfur dioxide.

In 1977, Congress clarified its purposes in this regard and explicitly endorsed the increment approach for preventing significant deterioration by enacting increments for total suspended particulate and sulfur dioxide (see section 163 of the Act). For nitrogen dioxide and PM-10, EPA promulgated increments that are of equivalent stringency as those established by Congress in section 163, as required under sections 166(d) and 166(f) of the Act. See 53 FR 40656 (October 17, 1988) with respect to nitrogen dioxide PSD increments and 58 FR 31622 (June 3, 1993) with respect to PM-10 PSD increments. The EPA does not agree that the redesignation of area 61 is necessary because of the statutory and regulatory limits on increases in concentrations of these pollutants. Congress's clearly expressed objective in Part C of the Clean Air Act is to prevent significant deterioration of air quality in clean air areas within the United States.

Comment 17: One commenter claims that EPA must review and consider comments submitted on the proposed rule in light of what its PSD regulations currently provide—State discretion in redesignating PSD baseline areas—and not what some commenters want the rules to provide. The commenter argues that to delay final approval of the proposed rule for consideration of comments that could only be described as a request for change to EPA's current rules and policies would be to deny the State of Nevada the discretion accorded it under the Clean Air Act, Alabama Power and established by EPA in its PSD regulations.

Response: As described in the proposed rule and above, EPA reviewed the request by the State of Nevada to subdivide hydrographic area 61 on the basis of general statutory language from section 107(d)(3) of the Act, which addresses redesignations, and EPA's PSD regulations, specifically 40 CFR 52.21(b)(15). See 67 FR 21194, at 21196. In the proposed rule, EPA acknowledges concerns about the existing regulatory criteria for redesignations, but indicates that, unless and until those criteria are revised, the Agency will continue to

evaluate State-initiated section 107(d) redesignation requests based on the language of the statute itself and the regulatory criteria in 40 CFR part 52. In so doing, EPA has not delayed final action on this particular redesignation request but is acting well within the 18-month period allowed for such actions under section 107(d)(3)(D) of the Act.

Comment 18: One commenter argues that the court in *Alabama Power Co. v. Costle*, 636 F. 2d 323 (D.C. Cir. 1979) held that the Clean Air Act delegated decisions on increment consumption and allocation thereof by baseline area designations to the States. They further claim that based on the decision in *Alabama Power* and EPA's 1980 PSD regulations, EPA's discretion to review redesignation requests by States involving boundaries of areas designated attainment or unclassifiable is limited to consideration of two criteria: (1) The boundaries of any area redesignated by a State cannot intersect the area of impact of any major stationary source or major modification that established or would have established a baseline date for the areas proposed for redesignation; and (2) the area redesignation can be no smaller than the area of impact of such sources. In this proposed rule, they assert that EPA has attempted to change its redesignation policy by adding a statutorily-derived standard of "appropriate air quality-related considerations," including review to ensure that the PSD baseline area redesignation "does not interfere with the State's management of air quality" and, in doing so, has identified the types of redesignations that may not be approvable even though the examples that EPA lists in the proposed rule are precisely the type of redesignations that have been approved by EPA in the past. The commenter states that EPA cannot change its redesignation policy except through notice and comment rulemaking.

Response: Among many PSD issues, the court in *Alabama Power* addressed the issue of how the increments were to be protected, but did not address the specific issue of whether section 107(d) redesignations are an appropriate means by States to manage the increments. In the section of the opinion entitled "Protection of the Increments," the court held: "We rule that EPA has authority under the statute to prevent or to correct a violation of the increments, but the agency is without authority to dictate to the States their policy for management of the consumption of allowable increments." See 636 F.2d 323, at 361. The court also recognized that: "The fundamentals of the statutory

approach include differentiation within the clean air areas of Class I, II, and III areas, and specification for each class of areas of maximum allowable increases (“increments”) in pollution concentrations for particulate matter and sulfur dioxide, with provision for the Administrator to promulgate allowable increments or similar limitations for other pollutants governed by NAAQS.” *Id.* at 361, 362. In *Alabama Power*, environmental groups had petitioned the court to require EPA to promulgate guidelines detailing the manner in which States may permit consumption of the available increments and also to have EPA set aside some portion of the available increments to ensure that current development does not inadvertently cause a violation of the maximum thresholds. The court declined to do so, and it was in this context that the court held that the Agency may not prescribe the manner in which States will manage their allowed internal growth. *Id.* At 363, 364.

The commenter cites the *Alabama Power* decision as endorsing a State’s use of section 107(d) redesignations to create new PSD baseline areas and untrigger minor source baseline dates, but the court in *Alabama Power* did not address this specific issue. The court emphasized the State’s authority to manage the increment, the size of which is based on an area’s designation as Class I, II, or III, but did not rule on States’ use of section 107(d) redesignations as a means to create new PSD baseline areas (e.g., additional Class II areas), or to untrigger minor source baseline dates and thereby “baseline” the portion of the increment consumed prior to the redesignation. This practice has been allowed under EPA regulations but was not one of the issues before the court in the *Alabama Power* case. Thus, while EPA acknowledges that States have the right to make increment management decisions, States also have the responsibility to do so in such a way as to prevent significant deterioration of their clean air resources and thereby achieve the fundamental statutory purposes of the PSD program as set forth in section 160 of the Act:

“(1) To protect public health and welfare from any actual or potential adverse effect which in the Administrator’s judgment may reasonably be anticipated to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air, notwithstanding attainment and maintenance of all national ambient air quality standards; (2) to preserve, protect, and enhance the air quality in national parks, national wilderness

areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic or historic value; (3) to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources; (4) to assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and (5) to assure that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process. EPA’s role is to ensure that States fulfill these responsibilities under the Act. *See Alaska v. EPA*, 298 F.3d 814 (9th Cir. 2002).

In reviewing a redesignation request under section 107(d)(3) of the Act, EPA looks to the statute and to relevant regulations and policies. As noted in the proposed rule, section 107(d)(3) does not provide specific criteria for EPA to use in evaluating a State redesignation request that involves changing the boundaries of existing attainment or unclassifiable areas, as opposed to redesignations that involve changes in status (e.g., “nonattainment” to “attainment” or “nonattainment” to “unclassifiable”). *See* 67 FR 21194, at 21196. As explained in the proposed rule, EPA concluded that the considerations set forth in section 107(d)(3)(A) provide EPA with a statutory basis with which to evaluate State-initiated redesignation requests in addition to the existing regulatory criteria, and in this context (i.e., a request to change the boundaries of attainment or unclassifiable areas), EPA concluded that one appropriate “air-quality related consideration” is whether the redesignation would interfere with a State’s management of air quality.

The Act provides support for application of this consideration in a context where boundaries or PSD class designations of existing attainment or unclassifiable areas would be affected (rather than changes in attainment status). *See* section 107(e) (State is authorized with EPA approval to redesignate air quality control regions “for purposes of efficient and effective air quality management”) and section 164(e) (resolution of disputes between State and Indian tribes arising from area redesignations from one PSD increment class to another: “In resolving such disputes relating to area redesignation, the Administrator shall consider the extent to which the lands involved are of sufficient size to allow effective air

quality management or have air quality related values of such an area”).

The proposed rule indicates that EPA did not intend through this rulemaking to revise PSD regulations (40 CFR 52.21) or redesignation policies. *See* 67 FR 21194, at 21196. If and when EPA decides to revise the redesignation criteria in the PSD regulations or to change its practice with regard to its evaluation of redesignation requests, the Agency will take the appropriate steps. Furthermore, even if one were to interpret the application of the statutorily-derived consideration discussed above to State redesignation requests as a change in policy, EPA clearly indicated in the proposed rule the criteria the Agency used to evaluate this State’s request, including the statutorily-derived consideration, and is acting through notice-and-comment rulemaking.

Comment 19: Several commenters express support for our proposed action and imply a connection between the State’s redesignation request for area 61 and the construction of a natural gas pipeline, construction of a power plant in the area, the State’s electric power needs, electric rates, and economic viability of the affected area.

Response: We acknowledge the commenters’ support for our action, but note that we do not share the opinion that the subdivision of area 61 under section 107(d) of the CAA is necessary for the subsequent construction of a natural gas pipeline, the development of a power plant, or the energy and economic benefits that flow from those projects. We also note that a power plant proposal for area 61 could proceed, in full accordance with all applicable statutory and regulatory requirements, regardless of EPA’s action to redesignate hydrographic area 61. The PSD permit process and regulatory requirements for any future power plant development will be essentially the same with or without the redesignation of area 61 into two areas.

III. EPA’s Final Action

After considering all of the factors described in the above sections, EPA is taking action to approve the State of Nevada’s two section 107(d) redesignation requests. Specifically, we are approving the State’s request to establish the statewide hydrographic areas (previously established for TSP) as the PM-10 unclassifiable areas under section 107(d) of the Act.⁴ This action

⁴ It is important to once again note that hydrographic areas are already established as the PSD baseline areas for PM-10 (and other

replaces the single unclassifiable area designated for Nevada for PM-10 with 253 unclassifiable areas. These 253 areas are defined as the hydrographic areas delineated by the Nevada Division of Water Resources in 1971, as adjusted in 1980 to recognize an additional hydrographic area (101A) referred to as Packard Valley. Together with the two PM-10 nonattainment areas in Nevada (Las Vegas and Reno planning areas), the total number of PM-10 section 107 areas in the State is now 255; these are the same 255 section 107 areas that have previously been designated for TSP. Thus, the effect of today's final rule approving the State's request to establish the hydrographic areas as the section 107 unclassifiable areas for PM-10 is to synchronize the classification of designated PM-10 section 107 areas with the current and longstanding approach the State has used to manage its air quality.

In approving the State's other section 107(d) request, we are redesignating hydrographic area 61 (Boulder Flat) by dividing the basin into two new section 107(d) areas for PM-10, sulfur dioxide (SO₂), and nitrogen dioxide (NO₂): upper area 61 and lower area 61.

Finally, we are updating the TSP table in 40 CFR 81 for Nevada to delete those designations that are no longer necessary. In particular, we are deleting the TSP attainment and unclassifiable area designations statewide, except for those in Clark County. We will delete the appropriate TSP designations for Clark County at such time as we approve revisions to their PSD program that include the PM-10 increments.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May

pollutants), so today's action regarding the state-wide designation for PM-10 does not effect any change in how the State manages their federally-delegated PSD program. For example, pursuant to 40 CFR 52.21(b)(14)(iv), minor source baseline dates originally established for the TSP increments are not rescinded by today's rule; they remain in effect and continue to apply for purposes of determining the amount of available PM-10 increment.

22, 2001). This action redesignates areas for air quality planning purposes and does not impose additional requirements. 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 does not impose any enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have 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 rule 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 rule 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.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. 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 January 13, 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 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 6, 2002.

Wayne Nastri,

Regional Administrator, Region 9.

Part 81, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for Part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

2. In § 81.329, the tables for Nevada—TSP, Nevada—SO₂, Nevada—PM-10, and Nevada—NO₂ are revised to read as follows:

§ 81.329 Nevada.

NEVADA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
(Township Range):				
Clark County:				
Las Vegas Valley (212)(15–24S, 56–64E)	X	.....	.....	.....
Colorado River Valley (213) (22–33S, 63–66E) .....	.....	.....	X ¹	.....
Rest of County ² .....	.....	.....	.....	X
Carson Desert (101)(15–24.5N, 25–35E)	X	.....	.....	.....
Winnemucca Segment (70)(34–38N, 34–41E)	X	.....	.....	.....
Lower Reese Valley (59)(27–32N, 42–48E) .....	.....	X	.....	.....
Fernley Area (76)(19–21N, 23–26E)	X	.....	.....	.....
Truckee Meadows (87)(17–20N, 18–21E)	X	.....	.....	.....
Mason Valley (108)(9–16N, 24–26E)	X	.....	.....	.....
Clovers Area (64)(32–39N, 42–46E) .....	.....	X	.....	.....

¹ EPA designation replaces State designation.

² Rest of County refers to 27 hydrographic areas either entirely or partially located within Clark County as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971), excluding the two designated areas in Clark County specifically listed in the table.

NEVADA—SO₂

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
(Township Range):				
Steptoe Valley (179) (10–29N, 61–67E):				
Central	X
Northern (area which is north of Township 21 North and within the drainage basin of the Steptoe Valley)	X	.....
Southern (area which is south of Township 15 North and within the drainage basin of the Steptoe Valley)	X	.....
Boulder Flat (61) (31–37N, 45–51E):				
Upper Unit 61	X
Lower Unit 61	X
Rest of State ¹	X

¹ Rest of State refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971), excluding the designated areas specifically listed in the table.

* * * * *

NEVADA—PM-10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Washoe County:				
Reno planning area	11/15/90	Nonattainment	02/07/01	Serious.
Hydrographic area 87				
Clark County:				
Las Vegas planning area	11/15/90	Nonattainment	02/08/93	Serious.
Hydrographic area 212				
Boulder Flat (61) (31–37N, 45–51E):				
Upper Unit 61	11/15/90	Unclassifiable		
Lower Unit 61	11/15/90	Unclassifiable		
Rest of State ¹	11/15/90	Unclassifiable		

¹ Rest of State refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971), as revised to include a division of Carson Desert (area 101) into two areas, a smaller area 101 and area 101A, and excluding the designated areas specifically listed in the table.

NEVADA—NO₂

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Boulder Flat (61)(31–37N, 45–51E):		
Upper Unit 61	X
Lower Unit 61	X
Rest of State ¹	X

¹ Rest of State refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971), excluding the designated areas specifically listed in the table.

[FR Doc. 02–28851 Filed 11–12–02; 8:45 am]
 BILLING CODE 6560–50-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3600, 8200, and 8360

[WO–320–1430–PB–24 1A]

RIN 1004–AD29

Mineral Materials Disposal; Natural History Resource Management; Procedures; Visitor Services

AGENCY: Bureau of Land Management, Interior.

ACTION: Correcting amendments.

SUMMARY: This document corrects the Bureau of Land Management (BLM) final rule on mineral materials disposal that was published November 23, 2001 (66 FR 58892), by adding changes in several cross references to the regulations on mineral materials disposal that appear elsewhere in BLM regulations. These cross-reference amendments should have appeared in the original final rule. This document also corrects typographical and editorial errors in the 2001 final rule.

EFFECTIVE DATE: January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Durga N. Rimal, Solid Minerals Group, at (202) 452–0350. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: The final rule published on November 23, 2001 (66 FR 58892–58910), removed part 3610 and subpart 3621 as part of its reorganization of the regulations on mineral materials disposal in 43 CFR part 3600, and made a conforming amendment in 43 CFR subpart 3809. The final rule should have amended the cross-references to part 3610 that appear in 43 CFR sections 8224.1 and 8365.1–5, and a cross-reference to subpart 3621 that appears in section 8365.1–5.

Because the substance of the removed CFR units appears in other sections of revised part 3600, the cross-references should have been amended and not removed. These erroneous cross-references in the Code of Federal Regulations may prove to be misleading and need to be corrected. This document corrects this oversight.

We are also correcting editorial and typing errors in part 3600. In section 3601.51, which describes when BLM may inspect your mineral materials operation, we are correcting a conjunction from “and” to “or” in order to forestall a possible interpretation of the provision to require a BLM inspector planning to inspect, for example, mine conditions also to conduct unnecessary surveys and examine weight tickets, which was not our intent in preparing the final rule. Also, in section 3602.12(c), we are correcting the term “public lands laws” to read “public land laws”, the term as used in all other BLM regulations.

Finally, we are correcting a printing error in a CFR authority citation. The citation for the Land and Water Conservation Fund Act is 16 U.S.C. 460l–6a, which contains the italic letter “ell” in the section number. This appears in the authority citation for part 8360 as the numeral “one”, an error that this document corrects.

Dated: October 29, 2002.

Michael H. Schwartz,
Group Manager, Regulatory Affairs.

For these reasons, make the following correcting amendments in 43 CFR parts 3600, 8200, and 8360:

PART 3600—MINERALS MATERIALS DISPOSAL

1. The authority citation for part 3600 continues to read as follows:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1201, 1732, 1733, 1740; Sec. 2, Act of September 28, 1962 (Pub. L. 87–713, 76 Stat. 652).

§ 3601.51 [Corrected]

2. In § 3601.51, amend paragraph (d) by removing the word “and” following the semicolon at the end of the paragraph, and adding in its place the word “or”.

§ 3602.12 [Corrected]

3. In § 3602.12, amend paragraph (c) by removing the phrase “public lands laws” from where it appears in the first sentence, and adding in its place the phrase “public land laws”.

Group 8200—Natural History Resource Management

PART 8200—PROCEDURES

4. The authority citation for part 8200 continues to read as follows:

Authority: 43 U.S.C. 1181 (a) and (e), 43 U.S.C. 1201, 43 U.S.C. 1701 *et seq.*

Subpart 8224—Fossil Forest Research Natural Area

§ 8224.1 [Corrected]

5. Correct § 8224.1 by removing at the end of paragraph (b) the term “§ 3610.1” and adding in its place the term “subpart 3602”.

PART 8360—VISITOR SERVICES

6. The authority citation for part 8360 is corrected to read as follows:

Authority: 43 U.S.C. 1701 *et seq.*, 43 U.S.C. 315a, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 460l–6a, 16 U.S.C. 1241 *et seq.*

Subpart 8365—Rules of Conduct

§ 8365.1 [Corrected]

7. Correct § 8365.1–5 in paragraph (b)(4) by revising the reference to “subpart 3621 of this title” to read “subpart 3604”, and in paragraph (c) by revising the phrase “part 3610 or 5400 of this title” to read “part 3600 or 5400 of this chapter”.

[FR Doc. 02–28704 Filed 11–12–02; 8:45 am]
 BILLING CODE 4310–84-P

Proposed Rules

Federal Register

Vol. 67, No. 219

Wednesday, November 13, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket 2000-CE-17-AD]

RIN 2120-AA64

Airworthiness Directives; Short Brothers and Harland Ltd. Models SC-7 Series 2 and SC-7 Series 3 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Short Brothers and Harland Ltd. (Shorts) Models SC-7 Series 2 and SC-7 Series 3 airplanes. This proposed AD would establish a technical service life for these airplanes and allow you to incorporate modifications, inspections, and replacements of certain life limited items to extend the life limits of these airplanes. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are intended to prevent fatigue failure of critical structure of the aircraft. Such failure could result in reduced structural integrity of the aircraft with consequent failure of the primary structural components and possibly result in structural failure during flight.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 23, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE-17-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments

electronically to the following address: 9-ACE-7-Docket@faa.gov. Comments sent electronically must contain "Docket No. 2000-CE-17-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Short Brothers PLC, P.O. Box 241, Airport Road, Belfast BT3 9DZ Northern Ireland; telephone: +44 (0) 28 9045 8444; facsimile: +44 (0) 28 9073 3396. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000-CE-17-AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Shorts Models SC-7 Series 2 and SC-7 Series 3 airplanes. The CAA reports that the Model SC-7 airframe has undergone structural evaluations that have resulted in the establishment of an airplane service life limit.

Modifications, inspections, and replacements of certain life limited items have been identified to further extend the life of the aircraft.

What Are the Consequences if the Condition Is Not Corrected?

The life limits, if not complied with, could result in failure of the primary structural components and possibly result in structural failure during flight.

Is There Service Information That Applies to This Subject?

Shorts has issued the following service information:

- Shorts Service Bulletin No. 51-51, Original Issue: June 6, 1978 (latest version at Revision No.: 6, dated: March 14, 1983);
- Shorts Service Bulletin No. 51-52, Original Issue: September 1, 1981 (latest version at Revision No.: 4, dated: July 16, 2002); and
- Shorts Skyvan Maintenance Program 1, not dated.

What Are the Provisions of This Service Information?

Service information specifies procedures to be followed to allow life limits to be extended. They include:

- Reinforcing the webs of the stub wing front spar box;
- Replacing the side load fittings and doubler joint plates at the nose undercarriage lower attachment;
- Changing the shear angle attachments of the lift strut fitting to wing rib 212;

- Replacing the inner flap and outer flap components;
- Carrying out the life extension programs for the landing gear nose undercarriage and landing gear main undercarriage; and
- Carrying out the Skyvan Maintenance Program life extension inspection program.

What Action Did the CAA Take?

The CAA classified this service bulletin as mandatory and issued British AD Number 019-09-81, not dated, in order to ensure the continued airworthiness of these airplanes in the United Kingdom.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the

applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept FAA informed of the situation described above.

The FAA’s Determination and an Explanation of the Provisions of this Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

- The unsafe condition referenced in this document exists or could develop on other Shorts Models SC-7 Series 2 and SC-7 Series 3 of the same type design that are on the U.S. registry;
- The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
- AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletins.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 22 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

The impact of this proposed AD would be not being able to operate the airplane past the established service life limit. The following paragraphs present cost if you choose to extend the life limit.

We estimate the following costs to accomplish the proposed aircraft life extension prescribed in Shorts Service Bulletin No. 51-51 on 19 aircraft:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
350 workhours × \$60 per hour = \$21,000	\$90,000	\$111,000	\$2,109,000

We estimate the following to accomplish the proposed aircraft life

extension prescribed in Shorts Service Bulletin No. 51-52 for the 6 aircraft

serial numbers 1845, 1847, 1883, 1889, 1943, and 1960:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
120 workhours × \$60 per hour = \$7,200	\$22,000	\$29,200	\$175,200

Three of these 6 airplanes will also incorporate Shorts Service Bulletin No. 51-51 and are part of the 19 airplanes subset of the total set of 22 airplanes in the U.S. registry.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is upon accumulating the applicable life limit or within the next 90 days after the effective date of this AD, whichever occurs later.

Why Is the Compliance Time of This Proposed AD Presented in Flights, Hours TIS and Calendar Time?

The unsafe condition on these airplanes is a result of the combination of the number of times the airplane is operated and how the airplane is operated (for example, weight carried). Airplane operation varies among operators. For example, one operator may operate the airplane 100 flights or

50 hours TIS in 3 months and carrying low weights while it may take another operator 12 months or more to accumulate 100 flights or 50 hours TIS while carrying heavy weights. For this reason, we have determined that the compliance time of this proposed AD should be specified in flights, hours time-in-service (TIS), and calendar time in order to assure this condition is not allowed to go uncorrected over time.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule

would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

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

ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Short Brothers and Harland Ltd.: Docket No. 2000–CE–17–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models SC–7 Series 2 and SC–7 Series 3 airplanes, all serial numbers, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent fatigue failure of critical structure of the aircraft. Such failure could result in reduced structural integrity of the aircraft with consequent failure of the primary structural components and possibly result in structural failure during flight.

(d) *What must I do to comply with this AD?* Do not operate the airplane upon accumulating the applicable life limit or within the next 90 days after the effective date of this AD, whichever occurs later. The following table presents the life limits:

Serial No.	Life limit
(1) SH1845 and SH1883	10,000 hours time-in-service (TIS).
(2) SH1847	15,200 hours TIS.
(3) SH1889	13,805 flights.
(4) SH1943	11,306 flights.
(5) SH1960	4,142 flights.
(6) All airplanes that do not encompass either serial number SH1845, SH1883, SH1847, SH1889, SH1943, or SH1960.	20,000 flights.

Note 1: For owners/operators that do not have a record of the number of flights on the aircraft, assume the number of flights on the basis of two per operating hour.

(e) *What must I do to extend the life limits for airplanes encompassing either serial number SH1845, SH1847, SH1883, SH1889, SH1943, or SH1960?* To extend the life limit on one of these airplanes, you must accomplish the actions of Shorts Service Bulletin No. 51–52, Original Issue: September 1, 1981 (latest version at Revision No.: 4, dated: July 16, 2002), and Shorts Skyvan Maintenance Program 1, not dated. The following table presents the extended life limit:

Serial No.	Extended life limit
(1) SH1845	13,456 hours.
(2) SH1847	20,200 hours.
(3) SH1883	15,000 hours.
(4) SH1889	20,094 flights.
(5) SH1943	17,325 flights.
(6) SH1960	8,449 flights.

(f) *What must I do to extend the life limit for my airplanes that do not encompass either serial number SH1845, SH1883, SH1847, SH1889, SH1943, or SH1960?* You can extend the life limit to 27,000 flights by accomplishing the actions of Shorts Service Bulletin No. 51–51, Original Issue: June 6, 1978 (latest version at Revision No.: 6, dated:

March 14, 1983), and Shorts Skyvan Maintenance Program 1, not dated.

Note 2: These life limits described in paragraph (e) are the final life limits of each aircraft unless the owner/operator works with Shorts Brothers PLC to develop a life extension program. Submit a plan to the FAA (address specified in paragraph (g) of this AD) for the proposed life extension program. Accomplishment of Shorts Service Bulletin No. 51–51, Original Issue: June 6, 1978 (latest version at Revision No.: 6, dated: March 14, 1983), does not extend the service life beyond the life limits described in paragraph (e).

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

- (1) Your alternative method of compliance provides an equivalent level of safety; and
- (2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not

eliminated the unsafe condition, specific actions you propose to address it.

(h) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

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

(j) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Short Brothers PLC, P.O. Box 241, Airport Road, Belfast BT3 9DZ Northern Ireland; telephone: +44 (0) 28 9045 8444; facsimile: +44 (0) 28 9073 3396. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in British AD Number 019–09–81, not dated.

Issued in Kansas City, Missouri, on November 5, 2002.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–28751 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2002-CE-46-AD]

RIN 2120-AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A. Model P-180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Piaggio Aero Industries S.p.A. (PIAGGIO) Model P-180 airplanes. This proposed AD would require you to inspect and determine whether any firewall shutoff or crossfeed valve with a serial number in a certain range are installed and would require you to replace any valve that has a serial number within this range. The proposed AD would allow the pilot to check the logbook and would not require additional action if the check showed that one of these valves was definitely not installed. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this proposed AD are intended to prevent a faulty firewall shutoff or crossfeed valve from developing cracks and leaking fuel. This could result in an engine fire.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 16, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE-46-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Piaggio Aero Industries S.p.A., Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481 374. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

SUPPLEMENTARY INFORMATION:**Comments Invited***How Do I Comment on This Proposed AD?*

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002-CE-46-AD." We will date stamp and mail the postcard back to you.

Discussion*What Events Have Caused This Proposed AD?*

The Ente Nazionale per l'Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA that an unsafe condition may exist on all PIAGGIO Model P-180 airplanes. The ENAC reports an incident of a ground fire on the left-hand engine nacelle of one of the affected airplanes. Investigation revealed that the fire was caused by a cracked crossfeed valve that had leaked fuel.

Further analysis led the ENAC to determine that the part number (P/N) EM484-3 valve was part of a manufacturing batch of nonconforming valves. This batch incorporates serial numbers 148 through 302 of these P/N

EM484-3 valves. These valves can be utilized as either firewall shutoff or crossfeed valves.

What Are the Consequences if the Condition Is Not Corrected?

If these valves are not removed from service, they could develop cracks and leak fuel. This could result in an engine fire.

Is There Service Information That Applies to This Subject?

PIAGGIO Aero Industries has issued:—Alert Service Bulletin: 80-0173, Original Issue: February 8, 2002, which includes procedures for inspecting the three Electro Mech P/N EM484-3 firewall shutoff and crossfeed valves to determine whether they incorporate a serial number in the range of 148 through 302; and —Service Bulletin: 80-0174, Original Issue: February 20, 2002, which includes procedures for modifying any valve incorporating a serial number in the range of 148 through 302 (the valve will be re-identified with a "A" at the end of the serial number).

What Action Did the ENAC Take?

The ENAC classified these service bulletins as mandatory and issued Italian RAI-AD 2002-442, dated February 21, 2002, in order to ensure the continued airworthiness of these airplanes in Italy.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the ENAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD*What Has FAA Decided?*

The FAA has examined the findings of the ENAC; reviewed all available information, including the service information referenced above; and determined that:

- The unsafe condition referenced in this document exists or could develop on other PIAGGIO Model P-180 airplanes of the same type design that are on the U.S. registry;
- The actions specified in the previously-referenced service

information should be accomplished on the affected airplanes; and
 —AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you inspect and determine whether any firewall shutoff or crossfeed valve with a serial number in a certain range is installed and would require you to replace any valve that has a serial number within this range. The proposed AD would allow the pilot to check the logbook and would not require additional action if the check showed that one of these valves was definitely not installed.

Compliance Time of this AD

What Will Be the Compliance Time of This AD?

The inspection compliance time of this AD is “within the next 30 days after the effective date of the AD.”

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

The compliance of this AD is presented in calendar time instead of hours TIS because the affected shutoff and crossfeed valves are unsafe as a result of a quality control problem. The problem has the same chance of existing on an airplane with 50 hours TIS as it would for an airplane with 1,000 hours

TIS. Therefore, we believe that a compliance time of 30 days will:

- Ensure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and
- Not inadvertently ground any of the affected airplanes.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 22 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × \$60 per hour = \$120	Not applicable	\$120	\$2,640

We estimate the following costs to accomplish the proposed replacement/modification:

Labor cost	Parts cost	Total cost per airplane
8 workhours × \$60 per hour = \$480	Manufacturer will provide free of charge	\$480

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Piaggio Aero Industries S.p.A.: Docket No. 2002-CE-46-AD.

(a) *What airplanes are affected by this AD?*
 This AD affects Model P-180 airplanes, all serial numbers, that are certificated in any category.

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

(c) *What problem does this AD address?*
 The actions specified by this AD are intended to prevent a faulty firewall shutoff or crossfeed valve from developing cracks and leaking fuel. This could result in an engine fire.

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

Actions	Compliance	Procedures
<p>(1) Maintenance Records Check:</p> <p>(i) Check the maintenance records to determine whether an Electro Mech part number (P/N) EM484-3 firewall shutoff or crossfeed valve with a serial number in the range of 148 through 302 is installed. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check.</p> <p>(ii) If, by checking the maintenance records, the owner/operator can definitely show that no Electro Mech P/N EM484-3 firewall shutoff or crossfeed valves with a serial number in the range of 148 through 302 are installed, then the inspection requirement of paragraph (d)(2) and the replacement requirement of paragraph (d)(3) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).</p>	<p>Within the next 30 days after the effective date of this AD, the unless already accomplished.</p>	<p>No special procedures required to check log-book.</p>
<p>(2) Inspection: Inspect the three Electro Mech P/N EM484-3 firewall shutoff and crossfeed valves to determine whether they incorporate a serial number in the range of 148 through 302.</p>	<p>Within the next 30 days after the effective date of this AD, unless already accomplished.</p>	<p>In accordance with the Accomplishment Instructions in PIAGGIO Aero Industries S.p.A. Alert Service Bulletin: 80-0173, Original Issue: February 8, 2002.</p>
<p>(3) Replacement: If any Electro Mech P/N EM484-3 firewall shutoff or crossfeed valve is found that incorporates a serial number in the range of 148 through 302, accomplish one of the following:</p> <p>(i) Install valve(s) that does not (do not) incorporate a serial number in the range of 148 through 302; or</p> <p>(ii) Modify any valve(s) that incorporates (incorporate) a serial number in the range of 148 through 302. The valve will be re-identified with an "A" at the end of the serial number</p>	<p>Accomplish any necessary replacements or modifications prior to further flight after the inspection required by paragraph (d)(2) of this AD, unless already accomplished.</p>	<p>Replace in accordance with applicable maintenance manual. Modify in accordance with the Accomplishment Instructions in PIAGGIO Aero Industries S.p.A. Service Bulletin: 80-0174, Original Issue: February 20, 2002.</p>
<p>(4) Spares: Do not install, on any airplane, any Electro Mech P/N EM484-3 firewall shutoff or crossfeed valve that incorporates a serial number in the range of 148 through 302, unless it has been modified as specified in paragraph (d)(3)(ii) of this AD.</p>	<p>As of the effective date of this AD</p>	<p>Not applicable.</p>

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

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

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of

this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under

sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from PIAGGIO AERO INDUSTRIES S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481 374. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Italian RAI-AD 2002-442, dated February 21, 2002.

Issued in Kansas City, Missouri, on November 5, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-28750 Filed 11-12-02; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02-ACE-8]

Proposed Establishment of Class E2 and Class E4 Airspace and Modification of Existing Class E5 Airspace; Ainsworth, NE; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects an error in the airspace classification of a notice of proposed rulemaking that was published in the **Federal Register** on Friday, August 23, 2002 (67 FR 54599). The proposal was to establish Class E2 and Class E4 airspace and to modify Class E5 airspace at Ainsworth, NE.

DATES: Comments for inclusion in the Rules Docket must be received on or before December 5, 2002.

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

SUPPLEMENTARY INFORMATION:

History

Federal Register document 02-21576 published on Friday, August 23, 2002 (67 FR 54599) proposed to establish Class E2 and Class E4 airspace and to modify Class E5 airspace at Ainsworth, NE. It has been determined that Class E4 airspace is only applicable when in conjunction with Class D airspace. There is no Class D airspace at Ainsworth, NE. The proposed Class E2 airspace must be redefined to include the proposed Class E4 airspace. The only change from the original Notice of Proposed Rulemaking is the title of the airspace involved.

Accordingly, pursuant to the authority delegated to me, the proposed Class E4 airspace is rescinded and the Class E2 airspace at Ainsworth, NE, as published in the **Federal Register** Friday, August 23, 2002 (67 FR 54599),

(FR Doc. 02-21576), is corrected as follows:

§ 71.1 [Corrected]

On page 54599, Column 3, DEPARTMENT OF TRANSPORTATION section, correct the heading of Airspace Docket No. 02-ACE-8 as follows:

Change "Proposed Establishment of Class E2 and Class E4 Airspace and Modification of Existing Class E5 Airspace; Ainsworth, NE" to read "Proposed Establishment of Class E2 Airspace and Modification of Existing Class E5 Airspace; Ainsworth, NE."

On page 54600, Column 3, last sentence of last paragraph, correct the definition of Class E2 airspace as follows:

Change "Within a 4.3-mile radius of Ainsworth Municipal Airport" to read "Within a 4.3-mile radius of Ainsworth Municipal Airport; within a 2.4 miles each side of the Ainsworth VOR/DME 197° radial extending from the 4.3-mile radius of Ainsworth Municipal Airport to 7 miles south of the airport; and within 2.4 miles each side of the Ainsworth VOR/DME 348° radial extending from the 4.3-mile radius of Ainsworth Municipal Airport to 7 miles north of the airport."

On page 45601, Column 1, delete the first paragraph and the entire section under the heading "ACE NE E4 Ainsworth, NE."

Issued in Kansas City, MO, on October 22, 2002.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 02-28832 Filed 11-12-02; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators and Commodity Trading Advisors; Exemption From Requirement To Register for CPOs of Certain Pools and CTAs Advising Such Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) has received two specific proposals that would provide additional exemption from registration as a commodity pool operator (CPO). It also has received a proposal that would provide additional exemption from registration as a commodity trading

advisor (CTA). The this **Federal Register** release the Commission is publishing and seeking comment on these proposals (Proposals) and is providing temporary CPO and CTA registration relief (No-Action Relief). To be eligible for the No-Action Relief, a CPO or CTA must meet the criteria specified in the **SUPPLEMENTARY INFORMATION** section.

DATES: Comments must be received by January 13, 2002.

ADDRESSES: Comments on this advance notice of proposed rulemaking should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418-5528, or by e-mail to secretary@cftc.gov. Reference should be made to "Advance Notice of Proposed Rulemaking on CPO and CTA Registration Exemptions."

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Associate Director, or Christopher W. Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418-5450 or (202) 418-5445, respectively; facsimile number: (202) 418-5536, or (202) 418-5547, respectively; and electronic mail: bgold@cftc.gov or ccummings@cftc.gov, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1a(5) of the Commodity Exchange Act (Act) defines the term "commodity pool operator" to mean—

[A]ny person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility,
* * * 1

¹ 7 U.S.C. 1a(5) (2000). Section 1a(5) also provides the Commission with authority to exclude persons from the CPO definition.

Commission Rule 4.10(d)(1) correspondingly defines the term "pool" to mean "any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests." Commission rules cited to herein are found at 17 CFR Ch. I (2002).

Both the Act and the Commission's rules issued thereunder can be accessed through the Commission's Web site: <http://www.cftc.gov/cftc/cftclawreg.htm>.

Section 4m(1) of the Act² provides in relevant part that it is unlawful for any CPO, “unless registered under [the] Act, to make use of the mails or any means or instrumentality of interstate commerce” in connection with its business as a CPO. Thus, except for several narrow exceptions described below, the operator of a collect investment vehicle that trades commodity interest contracts, whether for *bona fide* hedging purposes or otherwise, must be registered with the CFTC as a CPO.

The Commission has provided certain exceptions to the CPO registration requirement. In 1979, the Commission adopted Rule 4.13, which provides an exemption from CPO registration for the operators of essentially “family, club or small pools,” as those pools are defined in the rule.³ In addition, the Commission adopted in Rule 4.5 an exclusion from the CPO definition for certain otherwise regulated “eligible persons” with respect to their operation of “certain qualifying entities,” as those terms are defined in the rule, so long as they restrict the extent of their non-*bona fide* hedge activity in commodity interests as prescribed by the rule.⁴

When the Commission adopted Rule 4.13, there were fewer than a dozen designated commodity interest contracts based on stock indices, interest rates or other financial instruments. Since 1979, however, the Commission has designated, and trading has commenced in, more than 180 commodity interest contracts based on various financial instruments. These contracts frequently have attracted the interest of operators of collective investment vehicles, some of whom have registered with the Commission as CPOs so that they can use commodity interest contracts in their investment and risk management strategies. Others, however, have avoided participation in the commodity interest markets. While Rules 4.5 and 4.13 do provide CPO registration relief,

their criteria are too restrictive for many operators of collective investment vehicles to meet.

Section 1a(6)(A) of the Act⁵ defines the term “commodity trading advisor” to mean any person who—

(i) For compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value or the advisability of trading in—

(I) Any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility;

(II) Any commodity option authorized under section 4c; or

(III) Any leverage transaction authorized under section 19; or

(ii) For compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the activities referred to in clause (i).⁶

Section 4m(1) also requires CTAs to register as such with the Commission, and each of that section, Section 4m(3) and Rule 4.14 provides exemption from CTA registration.

Over time, persons who traditionally gave advice to collective investment vehicles solely on securities trading have become interested in providing trading advice to collective investment vehicles on commodity interest contracts based on various financial instruments as well. Absent the availability of an exemption, these persons have had to either register with the Commission as CTAs or refrain from providing any such commodity interest advice.

In light of these market developments and changed circumstances, the Commission is seeking comment on the Proposals. By this **Federal Register** release, the Commission also is asking for input generally on the subject of which CPOs and CTAs the Commission additionally should exempt from registration and what criteria the Commission should use to determine eligibility for exemption.

II. The Proposals

A. The National Futures Association (NFA) Proposal⁷

I. Introduction

The NFA Proposal would add a CPO registration exemption as well as a corresponding CTA registration exemption to the exemptions currently set forth in Rules 4.13 and 4.14,

² 7 U.S.C. 1a(6)(A)(2002).

³ See 44 FR 1918, 1919 (Jan. 8, 1979).

⁴ See 50 FR 15868 (April 23, 1985). Rule 4.5 specifies operating criteria that must be complied with to claim the relief available under the rule. Commodity futures and option contracts may be used without limitation for “*bona fide* hedging transactions and positions,” as that term is defined in Rule 1.3(z)(1). Rule 4.5 also permits up to 5 percent of the liquidation value of a qualifying entity’s portfolio to be committed to establish positions that are non- *bona fide* hedging transactions and positions. On October 28, 2002 the Commission published for comment a proposed amendment to Rule 4.5 that would provide an alternative criterion for such transactions and positions—*i.e.*, where the notional value of the transactions and positions does not exceed the liquidation value of the entity’s portfolio. 67 FR 65743.

⁵ 7 U.S.C. 1a(6)(A)(2002).

⁶ Section 1a(6) also excludes certain persons not at issue here from the CTA definition, and provides the Commission with authority to exclude other persons from that definition.

⁷ NFA is a futures association registered as such with the Commission under section 17 of the Act.

respectively. The CPO exemption would be available to pool operators that commit a limited amount of pool assets (*i.e.*, 5 percent of liquidation value) to establish commodity interest trading positions, and that restrict participation in the pool to “accredited investors” as defined in Rule 501(a)⁸ under the Securities Act of 1933 (Securities Act).⁹ The exemption would be set forth in a new paragraph (a)(3) of Rule 4.13, and would require a conforming amendment to paragraph (d) of the rule. The CTA exemption would apply to those persons that advise only pools operated by persons that are eligible for, and have claimed exemption under, the CPO provision described above. It would be set forth in a new paragraph (a)(10) of Rule 4.14.

2. The text of the NFA Proposal.

a. The NFA CPO Registration Exemption Proposal reads as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

(a) A person is not required to register under the Act as a commodity pool operator if:

* * *

(3)(i) It operates only commodity pools that use commodity futures or commodity options contracts solely for *bona fide* hedging purposes within the meaning and intent of § 1.3(z)(1); *Provided, however*. That in addition, with respect to positions in commodity futures and commodity option contracts which do not come within the meaning and intent of 1.3(z)(1), the aggregate initial margin and premiums required to establish such positions for any pool does not exceed five percent of the liquidation value of that pool’s portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into and such trading is solely incidental to its other trading activity; And *Provided further*. That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) may be excluded in computing such five percent;

(ii) It has not and does not market participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in the commodity futures or commodity options markets;

(iii) It limits the participants in its pools to accredited investors as defined in Securities Exchange Commission Rule 501;

(iv) It discloses in writing to each prospective participant the purpose of and the limitations on the scope of the commodity futures and commodity options trading in which it will engage;

(v) It submits to such special calls as the Commission may make to require it to demonstrate compliance with the provisions of this § 4.13(a)(3) including but not limited to information on its pools’ financial status and position holdings; and

⁸ 17 CFR 230.501(a) (2002).

⁹ 15 U.S.C. 77a *et seq* (2000).

(vi) It maintains all books and records prepared in connection with its activities as a commodity pool operator for a period of five years from the date of preparation and keeps such books and records readily accessible during the first two years of the five year period. All such books and records shall be open to inspection by any representative of the Commission or the United States Department of Justice.

(b)(1) No person who is exempt from registration as a commodity pool operator under paragraph (a)(1), (a)(2), or (a)(3) of this section and who is not registered as such pursuant to that exemption may, directly or indirectly, solicit, accept or receive funds, securities or other property from any prospective participant in a pool that it operates or that it intends to operate unless, on or before the date it engages in that activity, the person delivers or causes to be delivered to the prospective participant a written statement that must disclose this fact as follows: "The commodity pool operator of this pool is not required to register, and has not registered, with the Commodity Futures Trading Commission. Therefore, unlike a registered commodity pool operator, this commodity pool operator is not required by the Commission to furnish a Disclosure Document, periodic Account Statements, and an Annual Report to participants in the pool." The person must:

(i) Describe in the statement the exemption pursuant to which it is not registered as a commodity pool operator;

(ii) Provide its name, main business address and main business telephone number on the statement;

(iii) Manually sign the statement as follows: if such person is a corporation, by the chief executive officer, chief financial officer or counterpart thereto; if a partnership, by a general partner; and if a sole proprietorship, by the sole proprietor; and

(iv) By the earlier of seven business days after the date the statement is first delivered to a prospective participant and the date upon which the pool commences trading in commodity interests:

(A) File two copies of the statement with the Commission at the address specified in § 4.2; and

(B) File one copy of the statement with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department).

* * * * *

(d) If a person exempt from registration under the Act as a commodity pool operator under paragraph (a)(1), (a)(2), or (a)(3) of this section registers as a commodity pool operator, that person must comply with this Part 4 as if such person were not exempt from registration as a commodity pool operator.

2. The NFA CTA Registration Exemption Proposal reads as follows:

§ 4.14 Exemption from registration as a commodity trading advisor.

(a) A person is not required to register under the Act as a commodity trading advisor if:

* * * * *

(10)(i) The person's commodity interest trading advice:

(A) Is directed solely to and for the use of commodity pools that meet the requirements of and are operated by a person exempt from registration under § 4.13(a)(3) or are operated by a person excluded from the definition of commodity pool operator under § 4.5;

(B) Is solely incidental to its business of providing investment advice to such pools in instruments that are either exempt from regulation pursuant to the Commission's regulations or excluded from Commission regulation under the Act; and

(C) Employs only such strategies as are consistent with eligibility status under § 4.13(a)(3).

(ii) The person is not otherwise holding itself out as a commodity trading advisor;

(iii) The person submits to such special calls as the Commission may make to provide information on its position holdings; and

(iv) Prior to the date upon which such person intends to engage in business as a commodity trading advisor, the person files a notice of exemption with the Commission.

(A) The notice must provide the name, main business address and main business telephone number of the person filing the notice.

(B) The notice must represent that the person qualifies for exemption under this § 4.14(a)(10) and that it will comply with the criteria of this section.

(C) The notice shall be effective upon filing, *Provided, however*, That an exemption claimed hereunder shall cease to be effective upon any change which would render the representations made pursuant to paragraph (a)(10)(iii)(B) of this section inaccurate or the continuation of such representations false or misleading.

(v) In the event a person who has filed a notice of exemption under this § 4.14(a)(10) subsequently becomes registered as a commodity trading advisor, the person must file a supplemental notice of that fact.

(vi) Any notice required to be filed hereunder must be:

(A) In writing;

(B) Signed by a duly authorized representative; and

(C) Filed, along with a copy, with the Commission at the address specified in § 4.2.

(D) A copy also must be filed with the National Futures Association at its headquarters office (ATTN: Director of Compliance, Compliance Department).

*B. The Managed Funds Association (MFA) Proposal*¹⁰

1. Introduction

The MFA Proposal would provide an additional CPO registration exemption pursuant to a new Rule 4.9. The exemption would be available to pool operators that restrict participation in their pools to "qualified eligible persons" (QEPs) as defined in Rule 4.7 and certain "accredited investors" as defined in Rule 501(a) under the Securities Act. As is set forth below, the MFA Proposal would distinguish between the qualifications that natural persons would be required to meet and the qualifications that non-natural persons would be required to meet.

2. The text of the MFA Proposal

The MFA Proposal reads as follows:

§ 4.9. Exemption From Commodity Pool Operator Registration For Certain Persons Operating Privately Offered Pools.

(a) Subject to compliance with all of the provisions of this section, a person is exempt from registration as a commodity pool operator but remains otherwise subject to the jurisdiction of the Commission under the Act, provided that:

(i) interests in all pools that it operates are exempt from registration under the Securities Act of 1933, and such interests are offered and sold without marketing to the public in the United States;

(ii) it reasonably believes that at the time of investment (or, in the case of an existing pool, conversion to an eligible pool as defined herein), all individual investors (and any self-directed employee-benefit plans for such individuals) in all pools that it operates are qualified eligible persons as defined in § 4.7;

(iii) it reasonably believes that at the time of investment (or, in the case of an existing pool, conversion to an eligible pool as defined herein), all entity investors in all pools that it operates are (x) "accredited investors" as defined in 17 CFR 230.501(a)(1)–(3), (7) and (8) or (y) qualified eligible persons as defined in § 4.7; and

(iv) neither the commodity pool operator nor any of its principals is subject to any statutory disqualifications set forth in section 8a(2) or 8a(3) of the Act unless such disqualification arises from a matter which was previously disclosed in connection with an application for registration if such registration was granted or was disclosed more than 30 days prior to the filing of this notice; provided, however, that the commodity pool operator may request that the Commission waive this provision, which waiver may be granted upon a showing of good cause.

(b) Notwithstanding the exemption in (a) above:

¹⁰MFA is a non-profit membership organization for investment professionals in the hedge fund, futures and alternative investments industries.

(i) the commodity pool operator shall remain subject to the anti-fraud and anti-manipulation provisions of the Act; and

(ii) the commodity pool operator shall, within 180 days of the end of its fiscal year, deliver to the pool participants for each pool it operates under this exemption year-end financial statements certified by an independent public accountant and prepared in accordance with generally accepted accounting principles. In addition, the commodity pool operator shall file two (2) copies of the year-end financial statements with the Commission.

(c) Any person who desires to claim the exemption provided by this section shall file with the Commission a notice of eligibility:

(i) The notice of eligibility must contain the name, main business address and main telephone number of the person claiming the exemption and the name of the pool or pools for which exemption is claimed (an "eligible pool").

(ii) The notice of eligibility must contain representations that the pool or pools, in order to be eligible pools, will be operated in accordance with the requirements set forth in (a) and (b) of the section.

(iii) The notice of eligibility must contain a representation that the commodity pool operator will submit to such special calls as the Commission may make to require the commodity pool operator to demonstrate compliance with the provisions of § 4.9(a)(i)-(iv) and (b)(ii) with respect to the eligible pool. Failure to comply with a special call as described in this paragraph will render the claimed exemption void.

(iv) The notice of eligibility must be filed with the Commission prior to the date upon which the commodity pool operator intends to operate the eligible pool. In the case of a commodity pool operator operating one or more pools that would qualify as eligible pools but with respect to which no notice has been filed, a notice of eligibility may be filed with the Commission prior to the date upon which the commodity pool operator intends to commence operating the pool as an eligible pool, provided that the commodity pool operator has provided prior notice to pool participants that it intends to convert the pool to an eligible pool under this § 4.9 by filing a notice of eligibility with respect to the pool and has given such participants the right to redeem from the pool prior to such filing.

(v) The notice of eligibility shall be effective upon filing, provided that the filing is materially complete.

(d)(i) A commodity pool operator who has claimed exemption hereunder must, in the event that any of the information contained or representations made in the notice of eligibility becomes inaccurate or incomplete, file a supplemental notice with the Commission to that effect which, if applicable, includes such amendments as may be necessary to render the notice of eligibility accurate and complete.

(ii) The supplemental notice required by paragraph (d)(i) of this section shall be filed within fifteen business days after the commodity pool operator becomes aware of the occurrence of such event.

(iii) An exemption claimed hereunder shall cease to be effective 60 days after the

commodity pool operator becomes aware of any change which would render inaccurate any of the representations required by subparagraph (c)(ii) or (iii) of this section. During such 60 day period, the commodity pool operator may cure the defects or prepare and file an application to register as a commodity pool operator with the Commission. The filing of an application by the commodity pool operator with the Commission will toll the running of the 60 day period.

(e) A commodity pool operator that operates one or more pools that are not eligible pools under this § 4.9 in addition to one or more pools that are eligible pools under § 4.9 is, with respect to the eligible pools, exempt from all of the other requirements imposed on a commodity pool operator under the Act, provided that the commodity pool operator complies with this § 4.9.

III. The No-Action Relief

A. The Relief

During the rulemaking process commenced by the publication of this advance notice of proposed rulemaking, the Commission has determined to provide relief through the issuance of No-Action Relief, set forth below. As with other registration relief available to CPOs and CTAs under CFTC rules, the No-Action Relief must be claimed through the filing of a notice with the NFA and the CFTC, and one-way disclosure of the claim must be made.¹¹

1. CPO Registration No-Action Relief

The Commission will not commence any enforcement action against a CPO based upon the failure of the CPO to register as such under Section 4m(1) of the Act, where each pool for which the CPO claims relief under the No-Action Relief meets and remains in compliance with the following criteria:

a. Participation in the pool is restricted to: "accredited investors" as defined in Rule 501(a) under the Securities Act; "knowledgeable employees" as defined in Rule 3c-5 under the Investment Company Act of 1940,¹² Non-United States persons as defined in CFTC Rule 4.7(a)(1)(iv); and the persons described in CFTC Rule 4.7(a)(2)(viii)(A); and

b. The aggregate national value¹³ of each such pool's commodity interest positions,

¹¹ See, e.g., Rules 4.5 and 4.13.

¹² 17 CFR 270.3c-5 (2002).

¹³ For this purpose, a CPO should calculate "notional value" for each such futures position by multiplying the size of the futures contract, in contract units, by the current market price per unit, and for each such option position by multiplying the size of the option contract, in contract units, by the strike price. This criterion is patterned on the Commission's proposed alternative non-hedge operating criterion for Rule 4.5, as discussed above.

The following two examples show the effect of this notional value criterion using two different futures contracts. In each example, the CPO desires to establish the maximum number of contracts permissible under the No-Action Relief. In both examples it is assumed that one-half of the pool's liquidation value is \$5 million and that the

whether entered into for *bona fide* hedging purposes or otherwise,¹⁴ does not exceed fifty percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into.¹⁵

2. CTA Registration No-Action Relief.

The Commission will not commence enforcement action against a CTA based upon the failure of the CTA to register as such under Section 4m(1) of the Act, where the CTA meets and remains in compliance with the following criteria:

a. It claims relief from CPO registration under the No-Action Relief and its commodity interest trading advice is directed solely to, and for the sole use of, the pool or pools that it operates;¹⁶ or

settlement level of the contract is as of September 25, 2002.

With respect to the S&P 500 Stock Price Index futures contract traded on the Chicago Mercantile Exchange, the settlement level was \$19.29 and the contract value was \$204,822.50 ($819.29 \times \250). This means that the pool could establish 24 S&P 500 Stock Price Index futures contracts ($\$5,000,000 / 204,822.50 = 24.4$).

With respect to the 10-Year U.S. Treasury Note futures contract traded on the Chicago Board of Trade, the settlement level was 114,160 points and the contract value was \$114,160 ($114,160 \times 100\%$). This means that the pool could establish 43 10-Year Treasury Note futures contracts ($\$5,000,000 / \$114,160 = 43.8$).

¹⁴ See Rule 1.3(z)(1).

¹⁵ The operator of a "fund of funds" (an Investor Fund) that indirectly trade commodity interests through participation in one or more funds that directly trades commodity interests (each an Investee Fund) could claim exemption from registration under the No-Action Relief where that Investor Fund trades commodity interests solely through participation in one or more Investee Funds, and the CPO of each such Investee Fund has itself claimed the No-Action Relief. The operator of an Investor Fund that additionally directly trades commodity interests could also claim the No-Action Relief, so long as the portion of the Investor Fund that directly trades commodity interests does not exceed the limit referred to above.

For example, assume that the Investor Fund has a liquidation value of \$1 million, four-fifths of which is invested in four Investee Funds whose operators have claimed the No-Action Relief. With the remaining one-fifth of liquidation value, or \$200,000, the operator of the Investor Fund may have the Fund directly trade commodity interests, provided that the notional value of the Fund's commodity interest positions does not exceed fifty percent of the Fund's liquidation value, adjusted for unrealized profits and unrealized losses on positions directly entered into by the Fund.

If, however, the notional value of those positions exceeded fifty percent of the liquidation value of \$200,000, the operator would only be able to claim the No-Action Relief if the operator knew that the notional value of all of the Investor Fund's commodity interest positions (*i.e.*, those held outright and those held through investment in the four Investee Funds) was fifty percent of the Investor Fund's liquidation value. To be in possession of such information, the operator would need to have direct knowledge of, and immediate access to, the notional value of the commodity interest positions of each Investee Fund. The operator of the Investor Fund could have this knowledge and access where, for example, it was the same person as, or an affiliate of, the CPOs of the Investee Funds.

¹⁶ This provision is patterned after Rule 4.14(a)(5).

b. It is registered as an investment adviser under the Investment Advisers Act of 1940¹⁷ or with the applicable securities regulatory agency of any State, or it is exempt from such registration, or it is excluded from the definition of the term "investment adviser" pursuant to section 202(a)(2) or 202(a)(11) of the Investment Advisers Act of 1940, provided that:

(i) The person's commodity interest trading advice:

(A) Is directed solely to, and for the sole use of, pools operated by CPOs who claim relief from CPO registration under the No-Action Relief;

(B) Is solely incidental to its business of providing securities advice to each such pool;

(C) Employs only such strategies as are consistent with the "notional test" under the No-Action Relief; and

(ii) The person otherwise holding itself out as a CTA.

B. Claim of No-Action Relief

As stated above, the No-Action Relief is not self-executing. Rather, a CPO or CTA eligible for the No-Action Relief must file a Claim to perfect the relief and must make a one-way disclosure to its participants and clients, respectively, whether prospective or existing. A Claim of No-Action Relief will be effective upon filing, so long as the Claim is materially complete.

Specifically, the Claim of No-Action Relief must:

1. State the name, main business address, and main business telephone number of the CPO or CTA claiming the relief;

2. State the capacity (*i.e.*, CPO, CTA or both) and, where applicable, the name of the pool(s), for which the Claim is being filed;

3. Represent that the CPO and CTA qualified for the No-Action Relief, that it will comply with the criteria of the No-Action Relief, and that it will provide the CFTC-specified disclosure, set forth below;

4. Be signed by the CPO or CTA; and

5. Be filed with the NFA at its headquarters office in Chicago, Illinois (ATTN: Director of Compliance), with a copy to the Commission at its headquarters office in Washington, D.C. (ATTN: Division of Clearing and Intermediary Oversight, Audit and Financial Review (Section), prior to the date upon which the CPO or CTA first engages in business that otherwise would require registration as such.

C. One-Way Disclosure

1. For CPOs.

To comply with the terms of a Claim of No-Action Relief that it has filed, a CPO must provide the following

disclosure to prospective and existing participants in each pool it operates or intends to operate prior to engaging in activities that otherwise would require it to register as a CPO:

"Pursuant to No-Action Relief issued by the Commodity Future Trading Commission, [Name of CPO] is not required to register, and is not registered, with the Commission as a CPO. Among other things, the No-Action Relief requires this CPO to file a Claim of No-Action Relief with the National Futures Association and the Commission. It also requires that the aggregate notional value of this pool's commodity interest positions does not exceed fifty percent of the liquidation value of the Pool's Portfolio.

You should also know that this registration No-Action Relief is temporary. In the event the Commission ultimately adopts a Registration exemption rule that differs from the No-Action Relief, [Name of CPO] must comply with that rule to be exempt from CPO registration. If [Name of CPO] determines not to comply with that rule, it must either register with the Commission or cease having this Pool Trade Commodity Interests."

2. For CTAs

To comply with the terms of a Claim of No-Action Relief that it has filed, a CTA must provide the following disclosure to each pool it advises or intends to advise prior to engaging in activities that otherwise would require it to register as a CTA:

"Pursuant to No-Action Relief issued by the Commodity Futures Trading Commission, [Name of CTA] is not required to register, and is not registered, with the Commission as a CTA. Among other things, the No-Action Relief requires this CTA to file a claim of No-Action Relief with the National Futures Association and the Commission. It also requires that this CTA provide advice solely to pools whose CPOs have filed a corresponding claim of No-Action Relief.

You should also know that this registration No-Action Relief is temporary. In the event the Commission ultimately adopts a registration exemption rule that differs from the No-Action Relief, [Name of CTA] must comply with that rule to be exempt from CTA registration. If [Name of CTA] determines not to comply with that rule, it must either register with the Commission or cease providing commodity interest trading advice to this pool."

D. Other Matters

1. Effect of Filing a Claim of No-Action Relief

Persons that have filed a Claim of No-Action Relief will be exempt from Commission registration requirements under section 4m(1) of the Act. Such persons will remain subject, however, to prohibitions in the Act and the Commission's rules against fraud which apply to all CPOs and CTAs regardless of registration status. They also will remain subject to all other relevant

provisions of the Act and the Commission's rules which apply to all commodity interest market participants, such as the prohibitions on manipulation and the trade reporting requirements.

2. Effect of Final Rulemaking on a Claim of No-Action Relief

Any final action taken by the Commission as a result of this advance notice of proposed rulemaking will supersede the No-Action Relief. In the event the final action differs from the requirements of the No-Action Relief, the Commission will provide CPOs and CTAs with sufficient time within which to comply with such requirements, or, in the event a CPO or CTA is unable or unwilling to so comply, with sufficient time to register with the Commission or to withdraw a previously filed Claim of No-Action Relief and to cease engaging in business as a CPO or CTA.

3. Continued Availability of Registration No-Action Relief From Commission Staff

The Commission is aware that there may be existing or subsequently organized CPOs and CTAs that do not meet the criteria of the No-Action Relief, but that nonetheless, under their particular facts or circumstances, merit relief from registration. The Commission also is aware that, in the past, its staff has provided CPO and CTA registration no-action relief on a case-by-case basis. Consistent with that practice, the Commission directs its staff to continue to issue such relief where appropriate facts or circumstances are present.

IV. Request for Comment

The Commission requests public comment on the exemption criteria of the NFA Proposal, the MFA Proposal, the No-Action Relief, and the following issues:

1. What are the appropriate investor qualifications for participation in collective investment vehicles operated or advised by persons eligible for any new CPO or CTA registration exemption? Should these qualifications vary with the extent of non-hedge commodity interest trading activity? Should these qualifications be the same as those employed in the federal securities laws and the rules of the Securities and Exchange Commission to define financially sophisticated or knowledgeable persons—*e.g.*, "accredited investors," "qualified purchasers," and "knowledgeable employees"? Are there any situations where *either* investor qualifications *or* the level or type of trading activity

¹⁷ 15 U.S.C. 80b-1 *et seq.* (2000).

should be the sole criterion for exemption?

2. Should persons that qualify for any new CPO or CTA registration exemption be subject to a limit on non-hedge commodity interest trading activity that is higher or lower than the limit in the NFA Proposal? Should there be any limit at all on non-hedge activity by such persons?

3. Should persons that qualify for any new CPO or CTA registration exemption be subject to compliance with the special call, recordkeeping, and NFA notice requirements in the NFA Proposal and/or the special call, financial reporting, and CFTC notice and supplemental notice requirements of the MFA Proposal? Should these persons be subject to compliance with any other requirements and, if so, what should they be?

4. Is there any other form of registration relief that the Commission should propose for CPOs or CTAs and, if so, what is it?

5. How should the Commission's proposal address relief for the operator and/or the advisor of an Investor Fund ¹⁸?

Issued in Washington, DC on November 6th, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02-28820 Filed 11-12-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 244 and 249

[Release No. 33-8145; 34-46788; File No. S7-43-02]

RIN 3235-A169

Conditions for Use of Non-GAAP Financial Measures

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: As directed by the Sarbanes-Oxley Act of 2002, we are proposing new rules and amendments to address public companies' disclosure or release of certain financial information that is derived on the basis of methodologies other than in accordance with Generally Accepted Accounting Principles

¹⁸ Staff has received numerous informal inquiries regarding the fund of funds issue. The Commission intends to address this issue in a separate context as it applies more broadly to the managed funds industry. However, it is important to recognize the implications for funds of funds in this release, as discussed above.

(GAAP). We are proposing a new disclosure regulation, Regulation G, which would require public companies that disclose or release these non-GAAP financial measures to include, in that disclosure or release, a presentation of the most comparable GAAP financial measure and a reconciliation of the disclosed non-GAAP financial measure to the most comparable GAAP financial measure. We also are proposing to amend Item 10 of Regulation S-K and Item 10 of Regulation S-B to provide additional guidance to those registrants that include non-GAAP financial measures in Commission filings. Additionally, we are proposing to amend Form 20-F to incorporate the proposed amendments to Item 10 of Regulation S-K. Finally, we are proposing to require registrants to file on Form 8-K earnings releases or similar announcements, with those filings subject to the guidance in amended Item 10 of Regulation S-K and Item 10 of Regulation S-B.

DATES: Comments should be received on or before December 13, 2002.

ADDRESSES: To help us process and review your comments more efficiently, please send comments by one method only. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7-43-02. This number should be included in the subject line if sent via electronic mail. Electronically submitted comment letters will be posted on the Commission's Internet Web Site (*http://www.sec.gov*). We do not edit personal information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Joseph P. Babits, Craig Olinger, or Jennifer Minke-Girard at (202) 942-2910, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0402.

SUPPLEMENTARY INFORMATION: We are proposing new Regulation G.¹

We also are proposing amendments to Item 10 of Regulation S-K,² Item 10 of Regulation S-B,³ and Securities

Exchange Act of 1934⁴ Forms 8-K⁵ and 20-F.⁶

I. Background

On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act").⁷ Among its many goals, the Sarbanes-Oxley Act seeks to enhance the financial disclosures of public companies. As part of this effort to enhance disclosure to investors, Congress and the President recognized the immediate need to address issues relating to public companies' use of so-called "pro forma financial information."

Like Congress, the Commission also has been concerned with the use of "pro forma financial information." In 1973, the Commission issued Accounting Series Release No. 142, warning of possible investor confusion from the use of financial measures outside of GAAP:

[T]he unilateral development and presentation on an unaudited basis of various measures of performance by different companies which constitute departures from the generally understood accounting model has led to conflicting results and confusion for investors. Additionally, it is not clear that simple omission of depreciation and other non-cash charges deducted in the computation of net income provides an appropriate alternative measure of performance for any industry either in theory or in practice. * * * If accounting net income computed in conformity with generally accepted accounting principles is not an accurate reflection of economic performance for a company or an industry, it is not an appropriate solution to have each company independently decide what the best measure of its performance should be and present that figure to its shareholders as Truth.⁸

More recently, in December 2001, we issued cautionary advice regarding the use of "pro forma financial information" in earnings releases:

[W]e are concerned that "pro forma" financial information, under certain circumstances, can mislead investors if it obscures GAAP results. Because this "pro forma" financial information by its very nature departs from traditional accounting conventions, its use can make it hard for investors to compare an issuer's financial information with other reporting periods and with other companies.⁹

Additionally, earlier this year, we brought an enforcement action against Trump Hotels & Casino Resorts, Inc., where we found the use of pro forma

⁴ 15 U.S.C. §§ 78a *et seq.*

⁵ 17 CFR 249.308.

⁶ 17 CFR 249.220.

⁷ Pub. L. No. 107-204, 116 Stat. 745 (2002).

⁸ See Release No. 33-5337 (Mar. 15, 1973).

⁹ See Release No. 33-8039 (Dec. 4, 2001) [66 FR 63731].

¹ 17 CFR 244.100 through 244.102.

² 17 CFR 229.10.

³ 17 CFR 228.10.

financial information to be materially misleading.¹⁰

Like the Commission, Congress also was specifically concerned with pro forma results that are prepared or derived on a basis other than GAAP when it included Section 401(b) in the Sarbanes-Oxley Act. Because the Commission's rules and regulations address the use of "pro forma financial information" in other contexts, particularly in Regulation S-X,¹¹ and use that term differently from its use in the Sarbanes-Oxley Act,¹² we are adopting the term "non-GAAP financial measures" to identify the types of information targeted by Section 401(b) of the Sarbanes-Oxley Act. The Sarbanes-Oxley Act sought to eliminate the manipulative or misleading use of non-GAAP financial measures and, at the same time, enhance the comparability associated with the use of that information. As the Senate Committee on Banking, Housing, and Urban Affairs noted in their Committee Report:

The Committee seeks to address problems attendant to pro forma financial disclosures by requiring the SEC to promulgate rules requiring that issuers publish pro forma data with a reconciliation to comparable financial data calculated according to GAAP and in a way that is not misleading and does not contain untrue statements. The reconciliation presumes, and would require, the issuer to publish financial data calculated according to GAAP at the same time as it publishes pro forma data. This should enable investors to, at the least, simultaneously compare the pro forma financial data with the same types of financial disclosures (e.g., earnings) calculated according to GAAP for the comparable reporting period.¹³

Accordingly, Section 401(b) of the Sarbanes-Oxley Act directs the Commission to adopt rules requiring

that any public disclosure or release of non-GAAP financial measures by a company filing reports under Section 13(a)¹⁴ or 15(d)¹⁵ of the Exchange Act be presented in a manner that:

- Does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading; and
 - Reconciles the non-GAAP financial measure presented with the financial condition and results of operations of the registrant under GAAP.
- These rules would address the use of non-GAAP financial measures, regardless of whether that use would violate current Commission disclosure or antifraud rules.

As used in this release, a "non-GAAP financial measure" is a numerical measure of an issuer's historical or future financial performance, financial position or cash flows that:

- Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or
- Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the comparable measure so calculated and presented.

In their efforts to enhance financial disclosure, Congress and the President recognized the importance of timely information to investors and our markets. Section 409 of the Sarbanes-Oxley Act added to the Exchange Act new Section 13(l), which obligates public companies to "disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer, in plain English, which may include trend and qualitative information and graphic presentations, as the Commission determines, by rule, is necessary or useful for the protection of investors and in the public interest."¹⁶ Before the adoption of the Sarbanes-Oxley Act, we had taken important steps in this regard by proposing accelerated deadlines by which companies would be required to disclose significantly expanded categories of material information.¹⁷

Comments regarding our proposed accelerated deadlines for periodic reports of registrants, while not fully supporting that proposal, recognized the need for more current information.¹⁸ In fact, the comments of the American Bar Association's Subcommittee on Disclosure and Continuous Reporting of the Committee on Federal Regulation of Securities, Section of Business Law, proposed alternatively that we require companies to file their earnings reports on Form 8-K. The ABA Subcommittee expressed the view that such a requirement:

- Would enhance the attention and level of care companies bring to those disclosures because companies would be aware that the disclosures will become part of the formal reporting system; and
- Would bring those disclosures into the formal disclosure system where they would be available electronically on a widespread basis.¹⁹

Today, to implement the Sarbanes-Oxley Act's directives regarding the use of non-GAAP financial measures and further the statutory objective of increased real-time issuer disclosures, we are proposing new Regulation G, amendments to Item 10 of Regulation S-K, amendments to Item 10 of Regulation S-B and amendments to Exchange Act Forms 8-K and 20-F.

II. Discussion of Proposals

We intend the proposed rules and amendments to implement the requirements of the Sarbanes-Oxley Act, improve the transparency and quality of disclosure of non-GAAP financial measures and related information and enhance the current reporting of earnings information. We are taking a two-part approach to the disclosure of non-GAAP financial measures. First, we are proposing new Regulation G, which would apply whenever a company publicly discloses or releases material information that includes a non-GAAP financial measure. While Section 401(b) of the Sarbanes-Oxley Act refers to any communication of "pro forma financial information," we believe that proposing to make Regulation G applicable to public disclosures of material information containing or accompanied by non-GAAP financial measures delineates appropriately the scope of the rules required by Section 401(b). This regulation would impose specific requirements in connection with the

¹⁰ See *In the Matter of Trump Hotels & Casino Resorts, Inc.*, Release No. 34-45287 (Jan. 16, 2002).

¹¹ 17 CFR 210.1-01 through 210.12-29.

¹² In limited circumstances, such as in a merger, pro forma financial information is required to be disclosed in Commission filings. See Article 11 of Regulation S-X 17 CFR 210.11-01—210.11-03] for the conditions that require the presentation of pro forma information, as well as the preparation requirements. Such pro forma information is intended to depict the continuing impact of an actual or proposed transaction on the historical GAAP financial statements. Article 11 requires tabular presentation of the balance sheet and income statements, starting with the historical GAAP financial statements, showing the specific adjustments that would have been required by GAAP had the transaction occurred at an earlier time, and ending with the pro forma statements, and also requires disclosure of the assumptions which underlie its preparation. Pro forma information presented pursuant to Article 11 would not be subject to the rules and amendments we propose in this release.

¹³ Sen. Rep. No. 107-205, 107 Cong. 2d Sess. at 29 (2002).

¹⁴ 15 U.S.C. § 78m(a).

¹⁵ 15 U.S.C. § 78o(d).

¹⁶ 15 U.S.C. § 78m(l).

¹⁷ See Release No. 33-8106 (June 17, 2002) [67 FR 42913] and Release No. 33-8128 (Sept. 5, 2002) [67 FR 58479].

¹⁸ See National Investor Relations Institute letter to Mr. Jonathan G. Katz dated May 20, 2002, and American Bar Association letter to Mr. Jonathan G. Katz dated June 4, 2002.

¹⁹ American Bar Association letter to Mr. Jonathan G. Katz dated June 4, 2002, at page 4.

public communication of non-GAAP financial measures and, without affecting the existing antifraud regime, would prohibit material misstatements or omissions that would make the presentation of the material non-GAAP financial measure, under the circumstances in which it is made, misleading. Regulation G provides a limited exception for foreign private issuers based on what we believe to be an appropriate territorial approach. This limited exception applies the principles of territoriality based on where the disclosure is initially made and is similar to that provided by Rule 135e²⁰ under the Securities Act of 1933²¹ for offshore press and related activities.

Second, pursuant to the Sarbanes-Oxley Act and our existing authority under the Securities Act and Exchange Act, we are proposing to amend Item 10 of Regulation S-K and Item 10 of Regulation S-B to address specifically the use of non-GAAP financial measures in filings with the Commission.²² These proposed amendments would apply to the same categories of non-GAAP financial measures as are covered by proposed Regulation G, but contain somewhat more detailed requirements than proposed Regulation G.²³

In addition to these proposals, in order to bring earnings information within our current reporting system, we are proposing an amendment to Form 8-K that would require the filing with the Commission of releases or announcements disclosing material non-public financial information about completed annual or quarterly fiscal periods. Our proposal would not require the issuance of earnings releases or similar announcements. However, such releases and announcements would trigger the new proposed filing requirement. The proposed filing requirement would apply regardless of whether the release or announcement included disclosure of a non-GAAP financial measure. Public disclosure of financial information for a completed fiscal period in a presentation that is made orally, telephonically, by webcast, broadcast or similar means would not be required to be filed, if the presentation:

- Occurs within 48 hours of a related release or announcement that is filed

under proposed Item 1.04 of Form 8-K; and

- Is accessible to the public.

A. Proposed Regulation G

Proposed Regulation G would apply to any entity that is required to file reports pursuant to Sections 13(a) or 15(d) of the Exchange Act, other than a registered investment company.²⁴ Regulation G would apply whenever such a registrant, or a person acting on its behalf, discloses or releases publicly any material information that includes a non-GAAP financial measure. Regulation G would require the registrant to provide the following information as part of the disclosure or release of the non-GAAP financial measure:

- A presentation of the most comparable financial measure calculated and presented in accordance with GAAP;²⁵ and
- A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historic measures and quantitative, to the extent available without unreasonable efforts, for prospective measures, of the differences between the non-GAAP financial measure presented and the comparable financial measure or measures calculated and presented in accordance with GAAP.

If a non-GAAP financial measure is released orally, telephonically, in a webcast or broadcast or by similar means, proposed Regulation G would permit a registrant to provide the required accompanying information by posting it on the registrant's website. The registrant would be required to disclose the location and availability of the required accompanying information during its presentation.

With regard to the quantitative reconciliation of non-GAAP financial measures that are forward-looking, a schedule or other presentation detailing the differences between the forward-looking non-GAAP financial measure and the appropriate forward-looking GAAP financial measure would be required. If the GAAP financial measure is not accessible on a forward-looking basis, the registrant must disclose that

fact, explain why it is not accessible on a forward-looking basis and provide any reconciling information that is available without an unreasonable effort. Furthermore, the registrant must identify any information that is unavailable and disclose its probable significance.

Proposed Regulation G also provides that a non-GAAP financial measure, taken together with the accompanying information, may not misstate a material fact or omit to state a material fact necessary to make the presentation of the non-GAAP financial measure not misleading, in light of the circumstances under which it is presented.²⁶

For purposes of Regulation G, a non-GAAP financial measure would be a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that:

- Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or
- Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the comparable measure so calculated and presented.

In this regard, "GAAP" refers to generally accepted accounting principles in the United States, except that in the case of foreign private issuers whose primary financial statements are prepared in accordance with other generally accepted accounting principles, references to GAAP also include the principles under which those primary financial statements are prepared. We do not intend today's proposals to capture measures of operating performance or financial measures that fall outside the scope of the definition set forth above.

Non-GAAP financial measures would not include:

- Operating and other statistical measures (such as unit sales, numbers of employees, numbers of subscribers, or numbers of advertisers); and
- Ratios or measures that are calculated using only:
 - Financial measures calculated in accordance with GAAP; and
 - Operating measures or other measures that are not non-GAAP financial measures.

Non-GAAP financial measures would not include financial information that does not have the effect of providing

²⁰ 17 CFR 230.135e.

²¹ 15 U.S.C. §§ 77a *et seq.*

²² We also are proposing amendments to Exchange Act Form 20-F that would reference Item 10 of Regulation S-K.

²³ These proposed amendments would apply only to non-GAAP financial measures in filings with the Commission. Regulation G would apply to any public disclosure of material non-public information that included a non-GAAP financial measure, regardless of whether it is in a filing with the Commission.

²⁴ See proposed Section 244.101(c) of Regulation G. Registered investment companies are excluded from the definition of "registrant" for purposes of Regulation G, as Section 405 of the Sarbanes-Oxley Act exempts investment companies registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. § 80a-8) from Section 401 of the Sarbanes-Oxley Act and any rules adopted by the Commission under Section 401.

²⁵ Examples of financial measures calculated and presented in accordance with GAAP would include, but not be limited to, earnings or cash flows as reported in the GAAP financial statements.

²⁶ 17 CFR 244.100(b).

numerical measures that are different from the comparable GAAP measure. Examples of measures to which Regulation G would not apply would include the following:

- Disclosure of amounts of expected indebtedness, including contracted and anticipated amounts;
- Disclosures or amounts of repayments that have been planned or decided upon but not yet made;
- Disclosures of estimated revenues or expenses of a new product line, so long as such amounts were estimated as GAAP figures; and
- Measures of profit or loss and total assets for each segment required to be disclosed in accordance with GAAP.²⁷

We do intend that the definition of non-GAAP financial measure capture all measures that have the effect of depicting either:

- A measure of performance that is different from that presented in the financial statements, such as income or loss before taxes, or net income or loss as calculated in accordance with GAAP; or
- A measure of liquidity that is different from cash flow or cash flow from operations computed in accordance with GAAP.

An example of a non-GAAP financial measure would be a measure of operating income that excludes one or more expense or revenue items that are identified as "non-recurring." Another example would be EBITDA (earnings before interest, taxes, depreciation and amortization), which could be calculated using elements derived from GAAP financial presentations but, in any event, is not presented in accordance with GAAP. Examples of ratios and measures that would not be non-GAAP financial measures would include sales per square foot (assuming that the sales figure was calculated in accordance with GAAP) or same store sales (again assuming the sales figures for the stores were calculated in accordance with GAAP). An example of a ratio that would be a non-GAAP financial measure would be a measure of operating margin where either the revenue component or the operating

income component of the calculation, or both, were not calculated in accordance with GAAP.

The proposed regulation would apply to registrants that are foreign private issuers,²⁸ subject to a limited exception. Specifically, Regulation G would not apply to public disclosure of a non-GAAP financial measure by or on behalf of a registrant that is a foreign private issuer if the following conditions were satisfied:

- The securities of the issuer are listed or quoted on a securities exchange or inter-dealer quotation system outside the United States;
- The non-GAAP financial measure and the most comparable GAAP financial measure are not calculated and presented in accordance with generally accepted accounting principles in the United States; and
- The disclosure is made by or on behalf of the registrant outside the United States, or is included in a written communication that is released by or on behalf of the registrant only outside the United States.

We believe that these conditions, by focusing on whether the financial measure relates to U.S. GAAP and on the territorial principle of where the disclosure is made by or on behalf of the foreign private issuer, appropriately balance the interests of U.S. investors, including those interests as provided by the Sarbanes-Oxley Act, with the interests of foreign private issuers in communicating in their home markets. The Commission has not historically applied specific disclosure requirements to communications by foreign private issuers other than in their annual reports on Form 20-F. We believe that it is appropriate to take the Sarbanes-Oxley Act as a direction to apply Regulation G to foreign private issuers, subject to the exception we have proposed.

In addition, we believe that the worldwide availability of information properly disclosed outside the United States and the interests of U.S. investors in information communicated by or on behalf of the issuer outside the United States dictate that the exception for foreign private issuers should continue to apply where:

- Foreign or U.S. journalists or other third parties have access to the information, so long as the information is disclosed or released by or on behalf of the registrant only outside the United States;
- Following its release or disclosure, the information appears on one or more

web sites maintained by the registrant, so long as the web sites, taken together, are not available exclusively to, or targeted at, persons located in the United States; and/or

- Following the disclosure or release of the information outside the United States, the information is included in a submission to the Commission made under cover of a Form 6-K.²⁹

Indeed, regulators worldwide have been addressing this issue within their own jurisdictions. In May 2002, the Technical Committee of the International Organization of Securities Commissions (IOSCO) published a Cautionary Statement Regarding Non-GAAP Results Measures that urged issuers, investors and other users of financial information to use care when presenting and interpreting such information.³⁰ This IOSCO Cautionary Statement notes the universal concerns that regulators have about the potential misuse of non-GAAP earnings measures and provides examples of statements of cautionary advice regarding the appropriate use of non-GAAP information that have been issued in various countries.

Proposed Regulation G would be a disclosure provision applicable to entities that are required to file reports under Section 13(a) or Section 15(d) of the Exchange Act, other than registered investment companies.³¹ Proposed Rule 102 of Regulation G³² expressly provides that nothing in Regulation G shall affect any person's liability under Exchange Act Section 10(b)³³ or Rule 10b-5 thereunder.³⁴ Proposed Rule 102 also states that a person's compliance or non-compliance with the requirements of Regulation G would not affect that person's liability under Section 10(b) or Rule 10b-5. The facts and circumstances surrounding a violation of Regulation G, however, may give rise to a Rule 10b-5 violation if all the elements for such a violation are present. In this regard, we reminded companies in December 2001 that, under certain circumstances, non-GAAP financial measures could mislead investors if they obscure the company's

²⁷ FASB Statement 131, Disclosures about Segments of and Enterprise and Related Information, requires that companies report a measure of profit or loss and total assets for each reportable segment. This tabular information is presented in a note to the audited financial statements and is required to be reconciled to the GAAP measures, with all significant reconciling items separately identified and described. A registrant is required to provide a Management's Discussion & Analysis of segment information if such a discussion is necessary to an understanding of the business. Such discussion would generally include the measures reported under FASB Statement 131.

²⁸ "Foreign private issuer" is defined in Rule 405 under the Securities Act [17 CFR 230.405].

²⁹ 17 CFR 249.306.

³⁰ This document is available at www.iosco.org/press/presscomm020530.html.

³¹ A registrant's failure to include all of the information required to be included in a public announcement by Regulation G would not affect that registrant's form eligibility under the Securities Act or whether there is adequate current public information regarding the registrant for purposes of Securities Act Rule 144(c) [17 CFR 230.144(c)].

³² 17 CFR 244.102

³³ 15 U.S.C. 78j.

³⁴ 17 CFR 240.10b-5.

GAAP results.³⁵ We continue to be of the view that some disclosures of non-GAAP financial measures could give rise to actions under Rule 10b-5.³⁶

Section 3(b) of the Sarbanes-Oxley Act provides that a violation of that Act or the Commission's rules thereunder shall be treated for all purposes as a violation of the Exchange Act. Therefore, if an issuer, or any person acting on its behalf, fails to comply with Regulation G, the issuer and/or the person acting on its behalf could be subject to a Commission enforcement action alleging violations of Regulation G. Additionally, if the facts and circumstances warrant, we could bring an action under both Regulation G and Rule 10b-5.

Questions Regarding Proposed Regulation G

- As proposed, Regulation G would apply only to companies that are required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act. Should we expand the scope of the regulation to apply to all companies that publicly disclose non-GAAP financial measures, excluding registered investment companies?

- As an alternative to requiring reconciliation to the most directly comparable financial measure calculated and presented in accordance with GAAP, should we require reconciliation to specific GAAP financial measures in all cases, such as net income and cash flow from operating activities? If yes, to which GAAP financial measures should we require reconciliation?

- Should the presentation of certain non-GAAP financial measures require the presentation of a reconciled (full or summary) consolidated balance sheet, income statement and cash flow statement? If so, which non-GAAP financial measure(s) should trigger this requirement?

- Should the requirement of a quantitative reconciliation include an exception for prospective measures where the necessary information cannot be obtained without unreasonable effort?

- Should we limit the definition of non-GAAP financial measures to historical financial measures?

- Does the proposed definition of "non-GAAP financial measure" capture non-GAAP information where enhanced disclosure is appropriate? Does the proposed definition capture the pro-

forma financial information that the Sarbanes-Oxley Act targets? Should Regulation G apply to disclosures of material information including *any* financial measure calculated and presented otherwise than in accordance with GAAP? Is the proposed definition otherwise too narrow or too broad? If so, how should it be changed?

- Should we exclude non-GAAP financial measures communicated orally from the proposed regulation? Would such an exclusion be consistent with the terms of the Sarbanes-Oxley Act?

- Is there a danger that investors would consider the reconciliation to have been audited or reviewed by the issuer's independent auditors? Should Regulation G require companies to disclose whether the reconciliation has been reviewed or audited by their independent accountants in order to avoid investor confusion?

- In this release, we propose to require companies that include non-GAAP financial measures in filings to also include a discussion of the purposes for which the company's management uses the non-GAAP financial measure and why management believes the presentation of the non-GAAP financial measure provides useful information to investors.³⁷ Should we require that information in all communications that are subject to Regulation G? If so, why? If not, why not?

- Should we allow registrants greater latitude to satisfy the requirements of proposed Regulation G by posting the non-GAAP financial measure's components and the comparative GAAP financial measure on their website or in their Commission filings?

- As proposed below, and consistent with staff practice, the Commission generally has more detailed disclosure requirements where non-GAAP financial measures are included in Commission filings. Should we require these additional disclosure requirements in all cases, even in documents not filed with the Commission?

- Should we prohibit the presentation, whether or not included in filings with the Commission, of certain non-GAAP financial measures (for example, certain per-share measures or liquidity measures that exclude cash items)? If so, which measures?

- Will proposed Regulation G limit the use of non-GAAP financial measures? Please explain.

- Is the limited exception from Regulation G for foreign private issuers

appropriate in furtherance of the purposes of the Sarbanes-Oxley Act? Should the exception be broader or more limited? If so, how?

- Does the limited exception from Regulation G for foreign private issuers deprive U.S. investors of material information? Alternatively, would eliminating the limited exception for foreign private issuers deprive U.S. investors of non-GAAP financial measures? Furthermore, would eliminating the limited exception from Regulation G for foreign private issuers result in foreign private issuers de-registering and exiting the U.S. capital markets?

- Proposed Regulation G would apply to disclosures of non-GAAP financial measures that represent projections or forecasts of results of business combination transactions ("post-transaction measures") and that are filed with the Commission as information pursuant to the communications rules applicable to business combination transactions,³⁸ as well as non-GAAP financial measures of each registrant that are used to calculate post-transaction measures. Should there be an exception from certain requirements of Regulation G for post-transaction measures or other measures filed as information under the business combination rules? Should such measures be treated differently under Regulation G? If so, how? Business combination communications often include brief statements regarding the potential benefits to be achieved by the business combination (e.g., synergies, valuations, dividend amounts, etc.). Either instead of or in addition to the requirements of proposed Regulation G, should the rules specifically require the disclosure of any assumptions or bases underlying these measures?

- Should Regulation G be enforceable by the Commission only or also by private plaintiffs? Should language be included in Regulation G that makes explicit the manner in which it is to be enforced?

- Will proposed Regulation G meet the goals of Section 401(b) of the Sarbanes-Oxley Act? Does proposed Regulation G meet those goals in the most appropriate manner? Is there a way to achieve those goals that is less burdensome than that in proposed Regulation G? If so, what is it?

³⁵ See Release No. 33-8039 (Dec. 4, 2001) [59 FR 63731].

³⁶ See Release No. 33-8039 (Dec. 4, 2001) [59 FR 63731] and *In the Matter of Trump Hotels & Casino, Inc.*, Release No. 34-45287 (Jan. 16, 2002).

³⁷ See the discussion of the proposed amendments to Item 10 of Regulation S-K and Item 10 of Regulation S-B in Section II.B. of this release.

³⁸ See Exchange Act Rules 14a-12 [17 CFR 240.14a-12] and 14d-2 [17 CFR 240.14d-2] and Securities Act Rules 165 [17 CFR 230.165] and 425 [17 CFR 230.425].

B. Proposed Amendments to Item 10 of Regulation S-K, Item 10 of Regulation S-B and Form 20-F

We are proposing to amend Item 10 of Regulation S-K and Item 10 of Regulation S-B to add a statement concerning the use of non-GAAP financial measures in filings made with the Commission.³⁹ In addition, we are proposing to amend Exchange Act Form 20-F to incorporate Item 10 of Regulation S-K (as proposed to be amended). The proposed amendments to Item 10 of Regulation S-K and Item 10 of Regulation S-B would make clear that registrants using non-GAAP financial measures in filings with the Commission would have to provide:

- A presentation, with equal or greater prominence, of the most directly comparable financial measure calculated and presented in accordance with GAAP;
- A quantitative reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial measure disclosed with the most directly comparable measure or measures calculated and presented in accordance with GAAP;
- A statement disclosing the purposes for which the registrant's management uses the non-GAAP financial measure presented; and
- A statement describing the reasons why the registrant's management believes such non-GAAP financial measures provide useful information to investors.

In addition to these mandated disclosure requirements, we propose to amend Item 10 of Regulation S-K and Item 10 of Regulation S-B to prohibit the following:

- Presenting a non-GAAP financial measure in a manner that would give it greater authority or prominence than the comparable GAAP financial measure or measures;
- Excluding charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures;
- Adjusting a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur;
- Presenting non-GAAP financial measures on the face of the registrant's financial statements prepared in

³⁹ The proposed amendments to Item 10 of Regulation S-K would not apply to registered investment companies [17 CFR 229.10(e)(5)].

accordance with GAAP or in the accompanying notes;

- Presenting non-GAAP financial measures on the face of any pro forma financial information required to be disclosed by Article 11 of Regulation S-X;
- Using titles or descriptions of non-GAAP financial measures that are the same as, or confusingly similar to, titles or descriptions used for GAAP financial measures; and
- Presenting a non-GAAP per-share measure.

The requirement of Regulation G that the presentation of a non-GAAP financial measure, taken together with the information accompanying the measure and any other accompanying discussion, not contain a material misstatement or material omission necessary in order to make the presentation not misleading, in light of the circumstances in which the presentation is made, would also apply to disclosures in documents filed with the Commission.

The requirements for filed information are proposed to be more extensive and detailed than those of proposed Regulation G. The additional requirements would be generally consistent with the staff's historical practice in situations where it has reviewed filings containing non-GAAP financial measures. In addition, the requirements for a GAAP presentation and for a reconciliation would be slightly more stringent than those set forth under Regulation G. In particular, in filings with the Commission, the presentation of the comparable GAAP financial measure must have equal or greater prominence, and there would not be an "unreasonable effort" exception for forward-looking information to the requirement for a quantitative reconciliation between the non-GAAP financial measure and the comparable GAAP financial measure. Additionally, any non-GAAP financial measure presented must be accompanied by statements disclosing the purposes for which the registrant's management uses the non-GAAP financial measure and why the registrant believes the non-GAAP financial measure would be useful to investors. This requirement is designed to ensure that companies are using non-GAAP financial measures that provide information that is important in analyzing and understanding the registrant. We believe that these more stringent requirements are appropriate for filings with the Commission.

The requirements that a statement regarding the purposes for which management uses the non-GAAP

financial measure and the utility of the non-GAAP financial measure to investors could be satisfied by including the statements in the most recent annual report filed with the Commission (or a more recent filing) and by updating those statements, as necessary, no later than the time of the filing.⁴⁰

The definition of "non-GAAP financial measure" would be the same for purposes of these proposals as for Regulation G. Unlike under Regulation G, however, there is no limited exception for foreign private issuers and, therefore, the proposed requirements would apply to filings on Form 20-F. However, a non-GAAP financial measure that would otherwise be prohibited would be permitted in a Form 20-F filing of a foreign private issuer if the measure was expressly permitted under the generally accepted accounting principles used in the issuer's primary financial statements and was included in the issuer's annual report or financial statements used in its home country jurisdiction or market.

We are not proposing to subject filers on Form 40-F under the Multi-Jurisdictional Disclosure System (MJDS) to the proposed requirements because, under the philosophy of MJDS, which is currently applicable to certain Canadian issuers, the Canadian disclosure form requirements dictate required disclosure in filings with the Commission. Public disclosures in the United States by these issuers, including filings with the Commission on Form 40-F, would be subject to proposed Regulation G.

Questions Regarding Amendments to Item 10 of Regulation S-K, Item 10 of Regulation S-B and Form 20-F

- Are the proposed additional disclosures required in filings necessary in light of proposed Regulation G?
- Consistent with current staff policy, our proposal would prohibit the use of non-GAAP per-share measures. Is such a prohibition necessary, or would it suffice to reconcile both the numerator and denominator of the non-GAAP per-share measure with comparable GAAP measures, respectively?
- Should the non-GAAP financial measures be presented in a separate section of a Commission filing?
- Should the requirements for filings and those required in Regulation G be

⁴⁰ With regard to the issuer's statement as to why investors may find the non-GAAP financial measure useful, the sole fact that the non-GAAP financial measure is used by or useful to analysts cannot be the sole support for presenting the non-GAAP financial measure. Rather, the justification for the use of the measure must be substantive; it can, of course, be a justification that causes a measure to be used by or useful to analysts.

different? For example, should the requirement that the GAAP measure in a filing be presented with equal or greater prominence be included in Regulation G or not included in Item 10 of Regulation S-K and Item 10 of Regulation S-B?

- Should the requirement that a quantitative reconciliation of prospective measures be included in the filing have an exception similar to that proposed in Regulation G where the necessary information cannot be obtained without unreasonable effort?

- Are there additional disclosures that should be required in filings? If so, what disclosure items would be beneficial to investors?

- Consistent with current staff policy, our proposals would prohibit specified types of disclosures. Is such a prohibition necessary and appropriate?

- Should the proposed requirements apply to foreign private issuers' reports on Form 20-F?

- Should the proposed requirements apply to filings by Canadian issuers under the MJDS on Form 40-F?

- As with Regulation G, in the case of business combinations, the proposed requirements would apply to "post-transaction measures" filed as information under the communication rules applicable to business combination transactions.⁴¹ Is an exception from certain of the requirements for post-transaction measures or other measures filed as information under the business combination rules appropriate? Should such measures be treated differently? If so, how? Either instead of or in addition to the requirements of proposed Regulation G, should the rules specifically require the disclosure of assumptions or bases underlying announcements of potential benefits to be achieved by the business combination (e.g., synergies, valuations, dividend amounts, etc.)?

- If a company presents a non-GAAP measurement for a previous completed fiscal period, should it be required to present that same non-GAAP measurement in future filings where the previous period is compared to a recent completed fiscal period? For example, if a company presents a non-GAAP financial measurement that for the first fiscal quarter of 2002, should it be required to present the same non-GAAP measurement for the first fiscal quarter of 2003?

C. Proposed New Item 1.04 of Form 8-K

We propose to amend Form 8-K to add new Item 1.04 "Disclosure of Results of Operations and Financial Condition."⁴² New Item 1.04 would require registrants to file a Form 8-K within two business days of any public announcement or release disclosing material non-public information regarding a registrant's results of operations or financial condition for an annual or quarterly fiscal period that has ended.

Today, these types of announcements and releases are subject to Regulation FD.⁴³ Unlike disclosure made to satisfy Regulation FD, however, historical information filed under proposed Item 1.04 of Form 8-K always would be considered filed with the Commission for liability purposes.⁴⁴ Further, a Form 8-K filed pursuant to Item 1.04 would satisfy an issuer's obligation under Regulation FD only if the Form 8-K were filed within the time frame required by Regulation FD. Regulation FD could, of course, be satisfied by public disclosure other than through the filing of a Form 8-K meeting Regulation FD's requirements; in that case, a Form 8-K filed pursuant to Item 1.04 would be required to be filed within the two-business day timeframe.

Proposed Item 1.04 would require the registrant to identify briefly the announcement or release and file the announcement or release as an exhibit to the Form 8-K. Further, the requirements of proposed Item 10(e) of Regulation S-K or Item 10(h) of Regulation S-B would apply to a Form 8-K filed under proposed Item 1.04.

If non-public information is disclosed orally, telephonically, by webcast, broadcast, or similar means, Item 1.04 would not require the registrant to file a Form 8-K if:

- The disclosure initially occurs within 48 hours of a written release or announcement filed on Form 8-K pursuant to Item 1.04;

⁴² In Release No. 33-8106, we proposed significant amendments to Form 8-K. This release should be read as a companion proposing release to Release No. 33-8106. Accordingly, Item numbers used in this release refer to those proposed in Release No. 33-8106.

⁴³ 17 CFR 243.100-243.103.

⁴⁴ The requirements of proposed Item 1.04 would be in addition to the requirements of Regulation FD. Accordingly, information furnished under existing Item 9 (proposed to be Item, 6.01) of Form 8-K for the purpose of Regulation FD would not satisfy proposed Item 1.04 as it would not be considered filed with the Commission. Of course, information filed pursuant to Item 1.04, if filed in accordance with the time frame established by Regulation FD, would satisfy an issuer's Regulation FD obligation.

- The presentation is accessible to the public by dial-in conference call, webcast or similar technology;

- The financial and statistical information contained in the presentation is provided on the registrant's Web site, together with any information that would be required under proposed Regulation G; and

- The presentation was announced by a widely disseminated press release that included instructions as to when and how to access the presentation and the location on the registrant's Web site where the information would be available.

As noted above, our proposal would not require any registrant to issue an earnings release or similar announcement. However, if a registrant issues such a release or announcement containing material non-public information regarding the registrant's results of operations or financial condition for an annual or quarterly fiscal period that has ended, it would trigger the new proposed filing requirement.

The filing requirement under proposed Item 1.04 of Form 8-K would be triggered by the disclosure of material non-public information regarding a completed fiscal year or quarter. Repetition of previously publicly disclosed information or release of the same information in a different form, for example in an interim or annual report to shareholders, would not trigger the proposed Item 1.04 requirement. This result would not change if the repeated information were accompanied by information that was not material, whether or not already public. However, release of additional or updated material non-public information regarding the registrant's results of operation or financial condition for a completed fiscal year or quarter would trigger an additional Item 1.04 filing requirement. Issuers that make earnings announcements or other disclosures of material non-public information regarding a completed fiscal year or quarter in an interim or annual report to shareholders would be permitted to specify which portion of the report contains the information required to be filed under Item 1.04. In addition, the requirement to file under Item 1.04 of Form 8-K would not apply to issuers that make these announcements and disclosures only in their quarterly reports filed with the Commission on Form 10-Q⁴⁵ (or 10-QSB⁴⁶) or their annual reports filed

⁴⁵ 17 CFR 249.308a.

⁴⁶ 17 CFR 249.308b.

⁴¹ See footnote 38.

with the Commission on Form 10-K⁴⁷ (or 10-KSB⁴⁸).

Proposed Item 1.04 of Form 8-K would apply only to publicly disclosed or released material non-public information concerning an annual or quarterly fiscal period that has ended. While such disclosure may also include forward-looking information, it is the material information about the completed fiscal period that triggers proposed Item 1.04. Accordingly, proposed Item 1.04 would not apply to public disclosure of earnings estimates for future or ongoing fiscal periods, unless those estimates are included in the public announcement or release of material non-public information regarding an annual or quarterly fiscal period that has ended.⁴⁹ In such a case, specifically identified forward-looking information could be furnished under Item 6.01⁵⁰ rather than filed under proposed Item 1.04. Information furnished under Item 6.01 should be included in the same Form 8-K that contains the historical material information filed pursuant to Item 1.04.

Information furnished under Item 6.01 would not be subject to Section 18⁵¹ of the Exchange Act, nor would it be incorporated by reference into a registration statement, proxy statement or other report. The registrant would be required to identify the specific forward-looking statements it did not want to be considered filed.⁵²

Questions Regarding Proposed Item 1.04 of Form 8-K

- Is proposed Item 1.04 necessary given Regulation FD and proposed Regulation G?
- Should the Commission define “public disclosure” for purposes of proposed Item 1.04?
- Proposed Item 1.04 would apply only to disclosures regarding completed annual or quarterly fiscal periods. Should we expand the scope of proposed Item 1.04 to require the filing

of all material updates to estimates for current or future fiscal periods?

- Will proposed Item 1.04 have the effect of decreasing the extent to which public companies make public announcements or releases of material non-public information regarding completed fiscal periods? If so, what are the specific factors that would result in that decrease? Why would those factors result in that decrease?

- Is the posting of the complementary information on a Web site sufficient disclosure or should a filing be required for this information as well?

- Regulation G requires that any information provided on a Web site be available at the time the original public communication is made. Is it necessary for Item 1.04 to contain the same timing requirement?

- Should we require forward-looking information to be considered filed for purposes of Section 18 of the Exchange Act? Should forward-looking information, where appropriate, be incorporated by reference into a registration statement, proxy statement or other report?

- Should the disclosure requirements of Item 10 of Regulation S-K and Item 10 of Regulation S-B apply to complementary information not filed with the Commission?

- Would the application of Item 1.04 only to disclosures regarding completed annual or quarterly periods cause public companies to increase their disclosure of intra-period information, rather than disclosure regarding completed periods, in an effort to avoid the requirements of Item 1.04?

D. General Request for Comment

We request and encourage any interested person to submit comments regarding:

- The proposed rule and amendments that are the subject of this release;
- Additional or different changes; or
- Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of registrants, investors and other market participants. With regard to any comments, we note that such comments are of great assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

III. Paperwork Reduction Act

Proposed Regulation G and related amendments to Regulations S-K, Form 8-K and Form 20-F contain “collections of information” requirements within the meaning of the Paperwork Reduction

Act of 1995 (“PRA”),⁵³ and the Commission has submitted the proposals to the Office of Management and Budget (“OMB”) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the information collections are: Regulation G, Regulation S-K, Regulation S-B, Form 8-K and Form 20-F.

The Commission is proposing Regulation G pursuant to Section 401 of the Sarbanes-Oxley Act. Proposed Regulation G would require registrants when publicly disclosing material information that include non-GAAP financial measures to provide a reconciliation to comparable GAAP figures. Regulation G is intended to implement the requirements of the Sarbanes-Oxley Act. Specifically, Regulation G is intended to provide investors with balanced financial disclosure when non-GAAP financial measures are presented. Regulation G defines a non-GAAP financial measure as a numerical measure of an issuer’s historical or future financial performance, financial position or cash flow that:

- Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or
- Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the comparable measure calculated and presented in accordance with GAAP.

Accordingly, by definition, a non-GAAP financial measure that triggers the application of Regulation G would have been derived from a GAAP measure. For example, generally, EBITDA is net income before interest, taxes, depreciation and amortization. In order for a company to present EBITDA it must already know the amount of net income. We expect the cost of obtaining the additional disclosure required by Regulation G to be minimal. Moreover, much of the disclosure mandated by Regulation G, such as the most directly comparable GAAP measure, is already required to be provided pursuant to other forms and regulations, such as Form 10-K, Form 10-Q and Regulation S-X. Therefore, most of the costs associated with collecting such information are already included in the burden hours associated with those forms and regulations. Thus, we have estimated for purposes of the PRA that

⁴⁷ 17 CFR 249.310.

⁴⁸ 17 CFR 249.310b.

⁴⁹ Of course, Regulation FD would continue to apply to disclosure of such forward-looking information if it were material.

⁵⁰ In Release No. 33-8106 we proposed to revise and move Item 9 of Form 8-K to Item 6.01. See footnote 42. We include in this release proposed amendments to Item 6.01 of Form 8-K to reflect proposed Item 1.04.

⁵¹ 15 U.S.C. § 78r.

⁵² If information that was not forward-looking in nature or did not meet the definition in Section 21E of the Exchange Act [15 U.S.C. § 78u-5] was identified as forward-looking information, that information would, nonetheless, be considered filed for purposes of Section 18 of the Exchange Act and would, where appropriate, be incorporated by reference into a registration statement, proxy statement or other report.

⁵³ 44 U.S.C. § 3501 *et seq.*

it will take .5 burden hour for compliance with Regulation G. We anticipate that on average a company will have to comply with Regulation G roughly six times a year. Since there are approximately 14,000 public companies that would be subject to Regulation G we have estimated that there will be 84,000 disclosures made in accordance with Regulation G for a total of 42,000 burden hours. We would expect that an in house junior accountant would prepare the actual reconciliation.

Regulations S-K (OMB Control No. 3235-0071) and S-B (OMB Control No. 3235-0417) prescribe disclosure requirements that registrants must follow when filing registration statements, reports and schedule with the Commission. Our amendments to Item 10 of Regulation S-K and S-B incorporate the requirements of Regulation G and codify existing staff interpretations. Because the collection of information regarding the reconciliation is already being accounted for in Regulation G, we do not believe adding the same requirement to Item 10 of Regulation S-K and Item 10 of Regulation S-B incurs an additional collection of information within the meaning of the PRA. To account for the proposed reconciliation in both Regulation G and Item 10 of Regulation S-K and Item 10 of Regulation S-B would result in double counting. Additionally, companies already, usually and customarily, disclose the purposes for which the registrant's management uses the non-GAAP financial measure and why it believes that its presentation of the non-GAAP financial measure provides useful information to investors. Accordingly, we do not believe that our amendments to Item 10 of Regulation S-K and Item 10 of Regulation S-B contain a new "collection of information" or alter the existing burden of these collections of information within the meaning of the PRA.

Form 8-K (OMB Control No. 3235-0060) prescribes information, such as material events or corporate changes that a registrant must disclose. Proposed Item 1.04 of Form 8-K would require a company that publicly discloses material information regarding its actual or expected quarterly or annual results of operations or financial condition for a completed fiscal period to file the text of the public disclosure and any accompanying analysis. Proposed Item 1.04 of Form 8-K would not require companies to actually issue an earnings announcement or release but only require that it be filed if they choose to issue an earnings announcement or

release. Proposed Item 1.04 would bring earnings announcements and releases into the formal disclosure system where they would be available to investors on a widespread basis.

Proposed Item 1.04 of Form 8-K would impose the obligation to file a public company's earnings release. We estimate for purposes of the PRA that the burden associated with actually filing the Form 8-K to be minimal. We believe that proposed Item 1.04 of Form 8-K would require approximately .5 of a burden hour. We estimate that approximately 14,000 public companies would make an average of four filings per year. We believe the total burden hours associated with proposed Item 1.04 would be 28,000 hours. We would expect that companies would use in house personal to file the Form 8-K.

We have amended Form 20-F (OMB Control Number 3235-0288) to incorporate our amendment to Item 10 of Regulation S-K. While proposed Regulation G provides a limited exception for foreign private issuers, this exception would not apply to their Form 20-F filing or any disclosure of non-GAAP financial measures made in the United States. Accordingly, we do not believe our amendment to Form 20-F would result in an additional collection of information as any burden is already accounted for in Regulation G.

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. Compliance with the disclosure requirements is mandatory. There is no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

Request for Comment

We request comment in order to: (a) Evaluate whether the proposed collection of information and amendments to existing collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the burden of the proposed collection of information and amendments to existing collection of information; (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (d) evaluate whether there are ways to minimize the burden of the proposed collection of information and amendments of existing collections of information on those who respond,

including through the use of automated collection techniques or other forms of information technology.⁵⁴

Persons who desire to submit comments on the proposed collections of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609, with reference to File No. S7-XX-02. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7-XX-02 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Cost and Benefits

The Sarbanes-Oxley Act seeks to enhance the financial disclosure of public companies. In furtherance of this goal, the Sarbanes-Oxley Act has required the Commission, among other things, to adopt rules requiring that if a company publicly discloses non-GAAP financial measures or includes them in a Commission filing, the company must reconcile those non-GAAP financial measurements to a company's financial condition and results of operations under GAAP. Moreover, Sarbanes-Oxley requires that any public disclosure of non-GAAP financial measures not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the non-GAAP financial measure, in light of circumstances under which it is presented not misleading. Additionally, the Sarbanes-Oxley Act seeks to have companies that report under Sections 13(a) and 15(d) of the Exchange Act disclose to the public on a rapid and current basis such additional information concerning material changes in its financial condition or operations.

Proposed Regulation G, amendments to Item 10 of Regulation S-K, Item 10 of Regulation S-B and Form 20-F, upon

⁵⁴ Comments are requested pursuant to 44 U.S.C. § 3506(c)(2)(B).

adoption, would fulfill the statutory directive under Section 401(b) of the Sarbanes-Oxley Act. We recognize that any implementation of the Sarbanes-Oxley Act would likely result in costs as well as benefits and have an effect on the economy. We are sensitive to the costs and benefits of our proposals. We discuss these costs and benefits below as well as the costs and benefits associated with our amendments to Form 8-K.

A. Benefits

The proposed rules and amendments are intended to ensure that investors and others are not misled by the use of non-GAAP financial measures. Additionally, the proposed amendments to Form 8-K are intended to create a central depository where investors and other market participants can look to find the latest earning announcements and releases by public companies and provide enhanced attention to those announcements and releases. Furthermore, as the ABA noted in their comment letter regarding the Commission's recent proposal on accelerated reporting periods, the filing of the earnings reports would enhance the attention and level of care companies bring to those disclosures because they will become part of the formal reporting system and provide widespread access to investors. Therefore, we would expect the accuracy and reliability of a company's earnings report to be enhanced.

Regulation G and amendments to Item 10 of Regulations S-K and S-B require that any non-GAAP financial measure presented be reconciled with its most comparable financial measure prepared in accordance with GAAP. We anticipate that this reconciliation will help investors and market professionals to better evaluate the non-GAAP financial measures presented. It is possible that the reconciliation will provide the securities markets with additional information to more accurately evaluate companies' securities and in turn result in a more accurate pricing of securities. We, however, do not currently have sufficient information to quantify these or other benefits that Regulation G and our amendments to Item 10 of Regulation S-K, Regulation S-B, and Form 8-K and Form 20-F would provide. We therefore request your comments, including supporting data, on the benefits of these proposals.

B. Costs

As discussed in the PRA section, we believe that the costs associated with the proposed Regulation G and

amendments will be minimal. With regard to Regulation G, the costs associated with the requirement to reconcile the non-GAAP financial measure, should be minimal since by definition the non-GAAP financial measure would have been derived from a GAAP financial measure. Accordingly, in most cases, the registrant already will have available the comparable GAAP financial measure. Moreover, in cases where the GAAP financial measure is not available, any costs associated with obtaining the GAAP financial measure would reduce future costs associated with filing other forms, such as the Form 10-Q and Form 10-K where the GAAP measure must be presented.

We have estimated that public companies would have to comply with Regulation G six times a year. There are roughly 14,000 public companies. Using our estimates from the PRA section, we would expect that it would take a junior accountant roughly .5 hours to complete the required reconciliation and ensure there are no material misstatements. Accordingly, we have estimated that the total burden hours needed to comply with Regulation G would be 42,000 hours. Using cost data from the Securities Industry Association's Report on Management & Professional Earnings in the Securities Industry 2001 (SIA Report)⁵⁵ and adding an additional 35% for costs associated with overhead, we find that, on average, a junior accountant would earn \$26 an hour. We believe the salary of a junior accountant is appropriate for our estimates since in most cases we would expect the most directly comparable GAAP measure to be available. Therefore, we have estimated the total costs associated with complying with Regulation G to be \$1,092,000.

Our amendments to Item 10 of Regulation S-K and Item 10 of Regulation S-B incorporate the requirements of Regulation G. Because the costs associated with providing a reconciliation are already being accounted for in Regulation G, we do not believe adding the same requirement to Item 10 of Regulation S-K and Item 10 of Regulation S-B incurs any additional cost to the registrant. To account for the required reconciliation in both Regulation G and Item 10 of Regulation S-K and Item 10 of Regulation S-B would result in double counting. Additionally, because companies currently disclose the purposes for which the registrant's management uses the non-GAAP

financial measure and why it believes that presentation of the non-GAAP financial measure provides useful information to investors, this aspect of the proposed rule would not increase costs already being borne by registrants. Accordingly, we do not believe our amendments to Item 10 of Regulation S-K and Item 10 of Regulation S-B would result in any additional costs not already included in Regulation G or current filing requirements.

Our amendment to Form 8-K, would result in the additional cost of actually filing the earnings release or earnings announcement. There is no requirement to actually make an earnings announcement or release. The only requirement is to file such announcement or release if it is publicly disclosed. We have not included in our estimates any additional legal review costs associated with the filing of earnings releases or announcements, since we do not anticipate any additional significant review would be needed. In this regard, we note that many issuers already file their earnings releases and those releases whether filed or not are subject to Rule 10b-5.

We believe that personnel in finance, investor relations or corporate communications departments would most likely file the earnings announcements or releases since most earnings announcements are disseminated via press release. We have estimated that the actual time required to file an earnings announcement or release on Form 8-K to be .5 hour. In estimating this time burden we note that most press releases are fairly short in length, making the actual process of filing easier. We also note that the software necessary to file a Form 8-K is available free of charge from the Commission. We have estimated that public companies would be required to comply with Item 1.04 of Form 8-K roughly four times a year. Assuming 14,000 public companies and a total burden of .5 hour for the filing, we estimate that companies will spend 28,000 hours complying with our proposed Form 8-K amendment. Again using the SIA Report, and adding an additional 35% for costs associated with overhead, we find that a Corporate Communications Manager, on average, earns \$56.00 an hour. Accordingly, we have estimated the total salary cost associated with our amendments to Form 8-K to be \$1,568,000.

Finally, our proposed amendments to Form 20-F would incorporate Item 10 of Regulation S-K. While proposed Regulation G provides a limited exception for foreign private issuers, this exception would not apply to their

⁵⁵ The cost estimates are based on the SIA Report for employees based outside the New York City metropolitan area.

Form 20-F filing or any disclosure of non-GAAP financial measures made in the United States. Accordingly, the costs associated with our amendment to Form 20-F are already accounted for in our cost estimates for Regulation G.

We request your comments, including any supporting data, on our estimates of the costs of the proposals and any alternative options that may reduce the costs or enhance the benefits of our proposal.

C. Questions

- We have assumed that non-GAAP measures are derived and calculated from the GAAP measures. Accordingly, we do not believe there would be significant costs associated with the proposed reconciliation. Is our assumption that the comparable GAAP measure would be available at the time the non-GAAP measure is presented correct? If not, please discuss the nature and type of costs that may be incurred as a result of the reconciliation requirement.

- We believe the costs associated with the proposed filing requirement of Item 1.04 Form 8-K to be mainly administrative in nature. Are there other additional costs that may be incurred as a result of the proposed filing requirement of Form 8-K? If yes, please discuss the types and expected dollar amounts of such costs.

V. Effect on Efficiency, Competition, and Capital Formation

Section 23(a)(2)⁵⁶ of the Exchange Act requires us when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purpose of the Exchange Act. Proposed Regulation G and our proposed amendments to Item 10 of Regulation S-K, Item 10 of Regulation S-B, Form 20-F and Form 8-K would apply only to companies subject to the reporting requirements of Sections 13(a) and 15(d) of the Exchange Act, other than registered investment companies. Given that the estimated costs associated with our proposals are small we do not expect that competitors not subject to our proposals would gain any competitive advantage over those subject to the proposals. We, however, request comment on whether our proposals, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and

other factual support for their views if possible.

In addition, Section 2(b)⁵⁷ of the Securities Act and Section 3(f)⁵⁸ of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. Proposed Regulation G and our proposed amendments to Item 10 of Regulation S-K, Item 10 of Regulation S-B and Form 20-F are proposed pursuant to the Sarbanes-Oxley Act. As noted above the costs associated with these proposals and our proposed amendment to Form 8-K are expected to be minimal. Accordingly we do not believe that there will be any significant effects on competition or capital formation. We do believe, however, that there may be some benefits with regard to investor protection and efficiency of the market. The additional information provided has the potential to limit any misunderstanding with regard to the value of certain non-GAAP measures. Accordingly, this may allow the market to more rapidly and accurately price securities. If this occurs there would be a benefit to capital formation.

We request comment on whether proposed Regulation G and our proposed amendments, if adopted would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Regulatory Flexibility Analysis

The Commission hereby certifies pursuant to 5 U.S.C. § 605(b), that proposed Regulation G, amendments to Item 10 of Regulation S-K, Item 10 of Regulation S-B, Form 20-F and Form 8-K, contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The certification is based on the following analysis.

The proposals would affect companies that are small entities. Rule 0-10(a)⁵⁹ defines a company, other than an investment company, to be a "small business" or "small organization" for purposes of the Regulatory Flexibility Act if it had total assets of \$10 million or less on the last day of its most recent fiscal year. We estimate that there were approximately 2,500 public companies,

other than investment companies, that may be considered small entities.

Proposed Regulation G would require registrants when publicly disclosing material information that includes a non-GAAP financial measure to provide a quantified reconciliation to the most directly comparable GAAP financial measure. Regulation G is intended to implement the requirements of the Sarbanes-Oxley Act. Specifically, Regulation G is intended to provide investors with balanced financial disclosure when non-GAAP financial measures are presented. Regulation G defines a non-GAAP financial measure as a numerical measure of an issuer's historical or future financial performance, financial position or cash flow that:

- Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

- Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the comparable measure calculated and presented in accordance with GAAP.

Accordingly, by definition, a non-GAAP financial measure that triggers the application of Regulation G would have been derived from a GAAP financial measure. Therefore, we expect the cost of obtaining the additional disclosure required by Regulation G to be minimal. Moreover, much of the disclosure mandated by Regulation G, such as the most directly comparable GAAP measure, is already required to be provided pursuant to other forms and regulations, such as Form 10-KSB, Form 10-QSB and Regulation S-X. We have estimated for purpose of the PRA that it will take .5 hour for small businesses to comply with Regulation G. We anticipate that on average a company will have to comply with Regulation G six times year. We would expect that an in house junior accountant would prepare the actual reconciliation.

Using cost data from the Securities Industry Association's Report on Management & Professional Earnings in the Securities Industry 2001 ("SIA") and adding an additional 35% for costs associated with overhead, we find that, on average, a junior accountant would earn \$26 an hour. We believe the salary of a junior accountant is appropriate for our estimates since in most cases we

⁵⁷ 15 U.S.C. § 77b(b).

⁵⁸ 15 U.S.C. § 78c(f).

⁵⁹ 17 CFR 240.0-10(a).

⁵⁶ 15 U.S.C. § 78w(a)(2).

would expect the most directly comparable GAAP financial measure to be available. Therefore, we have estimated the total salary costs associated with complying with Regulation G to be \$78 per small business⁶⁰.

Our amendments to Item 10 of Regulation S-K and Item 10 of Regulation S-B incorporate the requirements of Regulation G and codify certain staff interpretations. Because the costs associated with providing a reconciliation are already being accounted for in Regulation G, we do not believe adding the same requirement to Item 10 of Regulation S-K and Item 10 of Regulation S-B incurs any additional costs to small businesses. To account for the required reconciliation in both Regulation G and Item 10 of Regulation S-K and Item 10 of Regulation S-B would result in double counting. Additionally, because the staff companies currently disclose the purposes for which the registrant's management uses the non-GAAP financial measure and why it believes that presentation of the non-GAAP financial measure provides useful information to investors, this disclosure would not impose new costs on small businesses. Accordingly, we do not believe our amendments to Item 10 of Regulation S-K and Regulation S-B result in any additional costs not already included in Regulation G or current filing requirements.

Our amendment to Form 8-K, would require the filing of earnings releases or earnings announcement. There is no requirement to actually make an earnings announcement or release. We have not included in our estimates any additional legal review costs associated with the filing of earnings releases or announcements, since we do not anticipate any additional significant review would be needed. In this regard, we note that many issuers already file their earnings releases and those releases whether filed or not are subject to Rule 10b-5.

We believe that personnel in finance, investor relations or corporate communications departments would most likely file the earnings announcement or release since most earnings announcements and releases are disseminated via press release. We have estimated that the actual time required to file an earnings announcement or release on Form 8-K to be .5 hours. In estimating this time

burden we note that most press releases are fairly short in length, making the actual process of filing easier. We also note that the software necessary to file a Form 8-K is available free of charge from the Commission.

We have estimated that small businesses would be required to comply with Item 1.04 of Form 8-K roughly four times a year. Again using the SIA Report and adding an additional 35% for costs associated with overhead, a Corporate Communications Manager, on average, earns \$56.00 an hour. Accordingly, we have estimated the total costs to a small business associated with our amendments to Form 8-K to be \$112.⁶¹

Additionally, our proposed amendments to Form 20-F would incorporate Item 10 of Regulation S-K. Because only foreign private issuers file Form 20-F we do not include the impact on them in our analysis.

Finally, to further examine the possible impact of the proposals on small businesses, we sampled publicly available information about 75 small businesses. We searched the Dow Jones *Press Release Wire*, for the period January 1, 2001 to July 1, 2002 to review any earnings announcements or earnings releases by the 75 small businesses. We found that 30 small businesses had no earnings announcements or releases available over the period and the other 45 companies reported only GAAP earnings. Accordingly, the cost impact would be significantly less if the small business does not use non-GAAP financial measures since there would be no reconciliation required. Additionally, if the small business does not issue earnings releases or announcements there would be no filing requirement on Form 8-K.

In sum, the proposals are expected to result in minimal additional costs to all subject companies, large or small. Accordingly, we believe the proposals should not have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. We solicit comment as to whether the proposed changes could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment with regard to our analysis. Commenters should provide empirical data on (a) the annual effect on the economy; (b) any increase in costs or prices for consumers or individual industries; and (c) any effect on competition, investment or innovation.

VIII. Statutory Basis

The proposed new Regulation G, new Item 1.04 to Form 8-K and the amendments to Item 6.01 of Form 8-K, Item 10 of Regulation S-K, Item 10 of Regulation S-B and Form 20-F are being proposed pursuant to Sections 2(b), 6, 7, 8, 19(a), and 28 of the Securities Act of 1933 as amended, Sections 3, 4, 10, 12, 13, 15, 23 and 36 of the Securities Exchange Act of 1934, as amended and Sections 3(a), 401 and 409 of the Sarbanes-Oxley Act.

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229, 244 and 249

Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The general authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 7261, 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-29, 80a-30, and 80b-11.

* * * * *

2. Amend § 228.10 by adding paragraph (h) to read as follows:

⁶⁰ Our \$78 estimate is calculated by multiplying six (the estimated number of Regulation G occurrences in a year) by .5 (the estimated hourly burden for each occurrence) and then multiplying that total by \$26 (the estimated cost per hour).

⁶¹ Our \$112 estimate is calculated by multiplying four (the estimated number of Item 1.04 Forms 8-K expected to be filed) by .5 (the estimated hourly burden for each filing) and then multiplying that total by \$56 (the estimate cost per hour).

§ 228.10 (Item 10) General.

* * * * *

(h) *Use of non-GAAP financial measures in Commission filings.* (1) Whenever one or more non-GAAP financial measures are included in a filing with the Commission:

(i) The registrant must include the following in the filing:

(A) A presentation with equal or greater prominence of the most directly comparable financial measure or measures calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP);

(B) A quantitative reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial measure disclosed or released with the financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (h)(1)(i)(A) of this section;

(C) A statement disclosing the purposes for which the registrant's management uses the non-GAAP financial measure; and

(D) A statement disclosing the reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations; and

(ii) A registrant must not:

(A) Present the non-GAAP financial measure in a manner that would give it greater authority or prominence than the comparable GAAP financial measure or measures;

(B) Exclude charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures;

(C) Adjust a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur;

(D) Present non-GAAP financial measures on the face of the registrant's financial statements prepared in accordance with GAAP or in the accompanying notes;

(E) Present non-GAAP financial measures on the face of any pro forma financial information required to be disclosed by Article 11 of Regulation S-X (17 CFR 210.11-01 through 210.11-03);

(F) Use titles or descriptions of non-GAAP financial measures that are the same as, or confusingly similar, to titles or descriptions used for GAAP measures; or

(G) Present a non-GAAP per-share measure; and

(iii) If the filing is not an annual report on Form 10-KSB (17 CFR 249.310b), a registrant need not include the information required by paragraphs (h)(1)(i)(C) and (h)(1)(i)(D) of this section if that information was included in its most recent annual report on Form 10-KSB or a more recent filing, provided that the required information is updated to the extent necessary to meet the requirements of paragraphs (h)(1)(i)(C) and (h)(1)(i)(D) of this section at the time of the registrant's current filing.

(2) For purposes of this paragraph (h), a non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flow that:

(i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

(ii) Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the comparable measure so calculated and presented.

(3) For purposes of this paragraph (h), "GAAP" refers to generally accepted accounting principles in the United States.

(4) For purposes of this paragraph (h), non-GAAP financial measures exclude operating and other financial measures and ratios or measures calculated using only:

(i) Financial measures calculated in accordance with GAAP and;

(ii) Operating measures or other measures that are not non-GAAP financial measures.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

3. The general authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 7261, 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll(d), 78mm, 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a) and 80b-11, unless otherwise noted.

* * * * *

4. Amend § 229.10 by revising the section heading and adding paragraph (e) to read as follows:

§ 229.10 (Item 10) General.

* * * * *

(e) *Use of non-GAAP financial measures in Commission filings.* (1) Whenever one or more non-GAAP financial measures are included in a filing with the Commission:

(i) The registrant must include the following in the filing:

(A) A presentation of the most directly comparable financial measure or measures calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP);

(B) A quantitative reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial measure disclosed with the financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (e)(1)(i)(A) of this section;

(C) A statement disclosing the purposes for which the registrant's management uses the non-GAAP financial measure; and

(D) A statement disclosing the reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations; and

(ii) A registrant must not:

(A) Present the non-GAAP financial measure in a manner that would give it greater authority or prominence than the comparable GAAP financial measure or measures;

(B) Exclude charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures;

(C) Adjust a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur;

(D) Present non-GAAP financial measures on the face of the registrant's financial statements prepared in accordance with GAAP or in the accompanying notes;

(E) Present non-GAAP financial measures on the face of any pro forma financial information required to be disclosed by Article 11 of Regulation S-X (17 CFR 210.11-01 through 210.11-03);

(F) Use titles or descriptions of non-GAAP financial measures that are the

same as, or confusingly similar to, titles or descriptions used for GAAP financial measures; or

(G) Present a non-GAAP per share measure; and

(iii) If the filing is not an annual report on Form 10-K or Form 20-F (17 CFR 249.220f), a registrant need not include the information required by paragraphs (e)(1)(i)(C) and (e)(1)(i)(D) of this section if that information was included in its most recent annual report on Form 10-K or Form 20-F or a more recent filing, provided that the required information is updated to the extent necessary to meet the requirements of paragraphs (e)(1)(i)(C) and (e)(1)(i)(D) of this section at the time of the registrant's current filing.

(2) For purposes of this paragraph (e), a non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that:

(i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

(ii) Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the comparable measure so calculated and presented.

(3) For purposes of this paragraph (e), "GAAP" refers to generally accepted accounting principles in the United States, except that in the case of foreign private issuers whose primary financial statements are prepared in accordance with other generally accepted accounting principles, references to GAAP also include the principles under which those primary financial statements are prepared.

(4) For purposes of this paragraph (e), non-GAAP financial measures exclude operating and other financial measures and ratios or measures calculated using only:

(i) Financial measures calculated in accordance with GAAP; and

(ii) Operating measures or other measures that are not non-GAAP financial measures.

(5) This paragraph (e) is not applicable to investment companies registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).

Note to paragraph (e). A non-GAAP financial measure that would otherwise be prohibited by paragraph (e)(1)(ii) of this section is permitted in a filing of a foreign private issuer if:

1. The non-GAAP financial measure is expressly permitted under the GAAP used in the registrant's primary financial statements included in the filing with the Commission; and

2. The non-GAAP financial measure is included in the annual report prepared by the registrant for use in the jurisdiction in which it is domiciled, incorporated or organized or for distribution to its security holders.

5. Part 244 is added to read as follows:

PART 244—Regulation G

Sec.

244.100 General rules regarding disclosure of non-GAAP financial measures.

244.101 Definitions.

244.102 No effect on antifraud liability.

Authority: 15 U.S.C. 7261, 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a-29.

§ 244.100 General rules regarding disclosure of non-GAAP financial measures.

(a) Whenever a registrant, or person acting on its behalf, publicly discloses material information that includes a non-GAAP financial measure, the registrant must accompany that non-GAAP financial measure with:

(1) A presentation of the most directly comparable financial measure calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP); and

(2) A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, and quantitative, to the extent available without unreasonable efforts, for forward-looking information, of the differences between the non-GAAP financial measure disclosed or released with the most comparable financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (a)(1)(i) of this section; and

(b) A registrant, or a person acting on its behalf, shall not make public a non-GAAP financial measure that, taken together with the information accompanying that measure and any other accompanying discussion of that measure, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading.

(c) This section shall not apply to a disclosure of a non-GAAP financial measure that is made by or on behalf of a registrant that is a foreign private issuer if the following conditions are satisfied:

(1) The securities of the registrant are listed or quoted on a securities exchange or inter-dealer quotation system outside the United States;

(2) The non-GAAP financial measure and the most comparable GAAP financial measure are not calculated and presented in accordance with generally accepted accounting principles in the United States; and

(3) The disclosure is made by or on behalf of the registrant outside the United States, or is included in a written communication that is released by or on behalf of the registrant only outside the United States.

Notes to § 244.100:

1. If a non-GAAP financial measure is made public orally, telephonically, by webcast or broadcast or by similar means, the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this section will be satisfied if:

(i) The required information in those paragraphs is provided on the registrant's Web site at the time the non-GAAP financial measure is made public; and

(ii) The location of the Web site is made public in the same presentation in which the non-GAAP financial measure is made public.

2. The provisions of paragraph (c) of this section shall apply notwithstanding the existence of one or all of the following circumstances:

(i) Foreign or U.S. journalists or other third parties have access to the information, so long as the information is disclosed or released by or on behalf of the registrant only outside the United States;

(ii) Following its release or disclosure, the information appears on one or more web sites maintained by the registrant, so long as the web sites, taken together, are not available exclusively to, or targeted at, persons located in the United States; and/or

(iii) Following the disclosure or release of the information outside the United States, the information is included in a submission by the registrant to the Commission made under cover of a Form 6-K.

§ 244.101 Definitions.

This section defines certain terms as used in Regulation G (§§ 244.100 through 244.102).

(a)(1) *Non-GAAP financial measure.* A non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that:

(i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

(ii) Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded

from the comparable measure so calculated and presented.

(2) A non-GAAP financial measure would not include operating and other financial measures and ratios or measures calculated using only:

(i) Financial measures calculated in accordance with GAAP; and

(ii) Operating measures or other measures that are not non-GAAP financial measures.

(b) GAAP. GAAP refers to generally accepted accounting principles in the United States, except that in the case of foreign private issuers whose primary financial statements are prepared in accordance with other generally accepted accounting principles, references to GAAP also include the principles under which those primary financial statements are prepared.

(c) Registrant. A registrant subject to this regulation is one that has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or is required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), excluding any investment company registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).

(d) United States. United States means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

§ 244.102 No effect on antifraud liability.

Nothing in this Regulation G (§§244.100 through 244.102) shall affect any person's liability, and a person's compliance or non-compliance with this Regulation G shall not affect any person's liability, under Section 10(b) (15 U.S.C. 78j(b)) of the Securities Exchange Act of 1934 or § 240.10b-5 of this chapter.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

8. Amend Form 8-K (referenced in § 249.308 as proposed in Release No. 33-8106, 67 FR 42913) by adding Item 1.04 and revising Item 6.01 of Section 1.

Note.— The text of Form 8-K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8-K—Current Report

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Section 1—Registrant's Business Operations

* * * * *

Item 1.04. Results of Operations and Financial Condition

(a) If a registrant, or any person acting on its behalf, makes any public announcement or release (including any update of an earlier announcement or release) disclosing material non-public information regarding the registrant's results of operations or financial condition for a completed quarterly or annual fiscal period, the registrant shall briefly identify the announcement or release and file the text of that announcement or release as an exhibit;

(b) A filing under this Item shall not be required in the case of disclosure of material non-public information that is disclosed orally, telephonically, webcast, or by similar means if:

(1) The information is provided as part of a presentation that initially occurs within 48 hours of a related, written announcement or release that is filed on Form 8-K pursuant to this Item 1.04;

(2) The presentation is accessible to the public by dial-in conference call, webcast or similar technology;

(3) The financial and other statistical information contained in the presentation is provided on the registrant's Web site, together with any information that would be required under § 244.100 of Regulation G; and

(4) The presentation was announced by a widely disseminated press release, that included instructions as to when and how to access the presentation and the location on the registrant's Web site where the information would be available.

(c) Forward-looking information, as defined by Section 21E of the Securities Exchange Act of 1934, included in an announcement or release that would otherwise be required to be filed pursuant to paragraph (a) of this Item, may instead be identified specifically and furnished under Item 6.01 in the same Form 8-K that contains the historical information filed pursuant to Item 1.04.

Instructions

1. The filing requirement under this Item 1.04 is triggered by the disclosure of material non-public information regarding a completed fiscal year or quarter. Release of additional or updated material non-public information regarding a completed fiscal year or quarter would trigger an additional Item 1.04 filing requirement.

2. Issuers that make earnings announcements or other disclosures of material non-public information regarding a completed fiscal year or quarter in an interim or annual report to shareholders, are permitted to specify which portion of the report contains the information required to be filed under Item 1.04.

3. This Item 1.04 does not apply in the case of a disclosure of material non-public information that is made in a quarterly report filed with the Commission on Form 10-Q (or 10-QSB) or an annual report filed with the Commission on Form 10-K (or 10-KSB).

* * * * *

Item 6.01. Regulation FD Disclosure and Forward Looking Information.

Unless filed under Item 7.01 or Item 1.04, report under this item only information that the registrant elects to disclose through Form 8-K pursuant to Regulation FD (§§ 243.100—243.103 of this chapter) or forward-looking information that is required to be filed under Item 1.04 of this form.

* * * * *

9. By amending Form 20-F (referenced in § 249.220) by removing in General Instruction C.(e) the words "performance and the Commission's policy on securities ratings" and adding, in their place, the words "performance, the Commission's policy on securities ratings and the Commission's policy on use of non-GAAP financial measures in Commission filings".

Dated: November 4, 2002.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-28603 Filed 11-12-02; 8:45 am]

BILLING CODE 8010-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[SC-041, 046-200211(b); FRL-7406-8]

Approval and Promulgation of Implementation Plans; South Carolina; Adoption of Revision Governing Credible Evidence and Removal of Standard 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve a revision to the State Implementation Plan (SIP) submitted on October 7, 2002, by the State of South Carolina, Department of Health and Environmental Control (Department). This revision consisted of an addition to Regulation 61-62.1, Definitions and General Requirements, entitled "Section V—Credible Evidence." The submission of Section V—Credible Evidence by South Carolina is to meet the requirements for credible evidence set forth in EPA's May 23, 1994, SIP call letter. EPA is also proposes to approve a correction to the SIP regarding removal of Standard 3 "Emissions from Incinerators" from the SIP as requested by the State of South Carolina. 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 significant, material, and adverse comments are received in response to this rule, 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 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 December 13, 2002.

ADDRESSES: Written comments should be addressed to: Sean Lakeman, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

Copies of the State submittal is 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. Sean Lakeman, 404/562-
9043.

South Carolina Department of Health
and Environmental Control, 2600 Bull
Street, Columbia, South Carolina
29201-1708.

FOR FURTHER INFORMATION CONTACT:
Sean Lakeman 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
Rules Section of this **Federal Register**.

Dated: November 1, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02-28699 Filed 11-12-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[DC039-2028; MD073-3091; VA090-5060;
FRL-7407-6]

Designation of Areas for Air Quality Purposes; District of Columbia, Maryland, Virginia; Metropolitan Washington, DC Ozone Nonattainment Area

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue a
finding that the Metropolitan

Washington, DC serious ozone
nonattainment area (hereinafter referred
to as the Washington area) has failed to
attain the one-hour ozone National
Ambient Air Quality Standard (NAAQS)
by November 15, 1999, the date set forth
in the Clean Air Act (CAA or Act) for
serious nonattainment areas. If EPA
takes final action to issue this proposed
finding of nonattainment, the area
would be reclassified as a severe ozone
nonattainment area. EPA is proposing to
set the dates by which the District of
Columbia, the State of Maryland and the
Commonwealth of Virginia each must
submit revisions to its State
Implementation Plan (SIP) that adopt
the severe area requirements. Finally,
EPA is proposing to adjust the dates by
which the area must achieve a nine (9)
percent reduction in ozone precursor
emissions to meet the 2002 rate-of-
progress requirement and adjust
contingency measure requirements as
this relates to the 2002 rate-of-progress
requirement.

DATES: Written comments must be
received on or before December 13,
2002.

ADDRESSES: Written comments may be
mailed to Walter K. Wilkie, Deputy
Branch Chief, Air Quality Planning and
Information Services Branch, Mailcode
3AP21, U.S. Environmental Protection
Agency, Region III, 1650 Arch Street,
Philadelphia, Pennsylvania 19103. Copies
of the documents relevant to this
action are available for public
inspection during normal business
hours at the Air Protection Division,
U.S. Environmental Protection Agency,
Region III, 1650 Arch Street,
Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT:
Christopher Cripps, (215) 814-2179, or
by e-mail at
Cripps.Christopher@epa.gov. Please
note that while questions may be posed
via telephone and e-mail, formal
comments must be submitted in writing,
as indicated in the **ADDRESSES** section
of this document.

SUPPLEMENTARY INFORMATION: The use of
“we,” “us,” or “our” in this document
refers to EPA.

Table of Contents

- I. What Action Are We Proposing?
- II. What Are the National Ambient Air
Quality Standards?
- III. What Is the NAAQS for Ozone?
- IV. What Is the Washington Ozone
Nonattainment Area?
- V. Why Is the Washington Area Currently
Classified as a Serious Nonattainment
Area?
- VI. Why Are We Proposing to Reclassify the
Washington Area?

- A. What Are the Clean Air Act
Requirements for Attainment Findings?
- B. What Is the Applicable Ozone Season
Air Quality Data for the Washington
Area?
- VII. Why Did EPA Defer Making a Finding of
Nonattainment Regarding the
Washington Area's Attainment Status
Beyond the Time Frame Prescribed by
the CAA?
- VIII. Has Air Quality Improved in the
Washington Area in Recent Years?
- IX. What Actions Has the District, Maryland
and Virginia Taken to Improve Air
Quality in the Washington Area?
- X. If We Finalize Our Proposed Rulemaking
Reclassifying the Washington Area, What
Would Be the Area's New Classification?
- XI. What Progress Has the Washington, DC
Area Made Towards Planning to Attain
the Ozone NAAQS by 2005?
- XII. What Would a Reclassification Mean for
the Washington Area?
- XIII. What Are the Transportation Conformity
Implications of Reclassification?
- XIV. How Does the Recent Release of
MOBILE6 Interact With Reclassification?
 - A. What Is the Relationship Between
MOBILE6 and the Attainment Year
Motor Vehicle Emissions Budgets
 - B. What Is the Relationship Between
MOBILE6 and the Post-1999 Rate-of-
Progress Requirement
- XV. If the Washington Area Is Reclassified to
Severe, What Would its New Schedule
be?
 - A. What Would the Attainment Date be?
 - B. When Are the Required SIP Revisions
Due?
 - C. What Will Be the Rate-of-Progress and
Contingency Measure Schedules?
- XVI. What Is the Impact of Reclassification
on Title V Operating Permit Programs?
- XVII. What Are the Relevant Policy and
Guidance Documents?
- XVIII. Administrative Requirements

I. What Action Are We Proposing?

We are proposing to find that the
Washington area has failed to attain the
one-hour ozone NAAQS by the
November 15, 1999, attainment deadline
prescribed under the CAA for serious
ozone nonattainment areas. EPA's
authority to make this finding is
discussed under section 181(b)(2) of the
CAA. Section 181(b)(2) explains the
process for determining whether an area
has attained the one-hour ozone
standard and reclassification of the area
if necessary. If we issue a final finding
of failure to attain, the Washington area
will be reclassified by operation of law
from serious nonattainment to severe
nonattainment.

II. What Are the National Ambient Air Quality Standards?

Since the CAA's inception in 1970,
EPA has set NAAQS for six common
pollutants: carbon monoxide, lead,
nitrogen dioxide, ozone, particulate
matter, and sulfur dioxide. For most of

these common air pollutants, there are two types of pollution limits referred to as the primary and secondary standards.¹ The primary standard is based on health effects; the secondary standard is based on environmental effects such as damage to property, plants, and visibility. The CAA requires these standards to be set at levels that

protect public health and welfare with an adequate margin of safety. These standards present state and local governments with the air quality levels they must meet to achieve clean air. Also, these standards allow the American people to assess whether the

air quality in their communities is healthful.

III. What Is the NAAQS for Ozone?

The NAAQS for ozone is currently expressed in two forms which are referred to as the one-hour and eight-hour standards. Table 1 summarizes the ozone standards.

TABLE 1.—SUMMARY OF OZONE STANDARDS

Standard and type	Value (parts per million)	Method of compliance
1-hour—Primary and secondary	0.12	Must not be exceeded, on average, more than one day per year over any 3-year period.
8-hour—Primary and secondary	0.08	The 3-year average of the annual fourth-highest maxima 8-hour average ozone concentrations measured at each monitor within an area.

The 1-hour ozone standard of 0.12 parts per million (ppm) has existed since 1979. On July 18, 1997, EPA adopted the 8-hour ozone standard, which was intended to replace the one-hour standard in areas that were attaining the one-hour standard, (62 FR 38856).² The one-hour ozone standard continues to apply to all areas, notwithstanding promulgation of the 8-hour standard (40 CFR 50.9(b)). Both standards are codified at 40 CFR part 50. This document addresses the classification of the Washington area relative to only the one-hour ozone standard.

IV. What Is the Washington Ozone Nonattainment Area?

The Washington area consists of the District of Columbia (the District), a Northern Virginia portion (Arlington, Fairfax, Loudoun, Prince William and

Stafford Counties and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park), and Calvert, Charles, Frederick, Montgomery, and Prince George’s Counties in Maryland.

V. Why Is the Washington Area Currently Classified as a Serious Nonattainment Area?

Under section 107(d)(1)(C) of the CAA, each ozone area designated nonattainment for the one-hour standard prior to enactment of the 1990 CAA amendments, such as the Washington area, was designated nonattainment by operation of law upon enactment of the amendments. Under section 181(a) of the Act, each ozone area designated nonattainment under section 107(d) was also classified by operation of law as “marginal,” “moderate,” “serious,” “severe,” or

“extreme,” depending on the severity of the area’s air quality problem. The design value for an area, which characterizes the severity of the air quality problem, is represented by the highest design value at any individual ozone monitoring site (i.e., the highest of the fourth highest one-hour daily maximum monitored ozone levels in a given three-year period with complete monitoring data). Table 2 provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.160 and 0.180 ppm, such as the Washington area (which had a design value of 0.165 ppm in 1989), were classified as serious. These nonattainment designations and classifications were codified in 40 CFR part 81 (see 56 FR 56694, November 6, 1991).

TABLE 2.—OZONE NONATTAINMENT CLASSIFICATIONS

Area classification	Design value (ppm)	Attainment date
Marginal	0.121 up to 0.138	November 15, 1993.
Moderate	0.138 up to 0.160	November 15, 1996.
Serious	0.160 up to 0.180	November 15, 1999.
Severe	0.180 up to 0.280	November 15, 2005.
Extreme	0.280 and above	November 15, 2010.

In addition, states containing areas that were classified as serious nonattainment were required to submit SIP revisions to provide for certain controls, to show progress toward attainment, and to provide for attainment as expeditiously as

practicable, but not later than November 15, 1999. Serious area SIP requirements are found primarily in section 182(c) of the CAA.

VI. Why Are We Proposing To Reclassify the Washington Area?

A. What Are the Clean Air Act Requirements for Attainment Findings?

Regarding reclassification for failure to attain, section 181(b)(2)(A) of the Act

¹ EPA has established only a primary standard for carbon monoxide.

² EPA revoked the one-hour standard in areas that were attaining the standard on June 5, 1998 (63 FR 31051). However, on May 14, 1999, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the 8-hour ozone standard could not be

enforced by EPA. Although the Court of Appeals determined that the 8-hour standard could not be enforced, it did not vacate the standard, hence, the 8-hour standard remained in effect. While appealing this decision to the United States Supreme Court, EPA reinstated the one-hour standard in areas where it had been revoked. (See

65 FR 45181, dated July 20, 2000). On February 27, 2001, the Supreme Court upheld the 8-hour standard and instructed EPA to develop an implementation plan for the 8-hour standard that is consistent with the Supreme Court’s opinion. *Whitman v. American Trucking Assoc. Inc.*, 531 U.S. 457 (2001).

provides that: Within six months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date) whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds have not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—

- (i) The next higher classification for the area, or
- (ii) The classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

No area shall be reclassified as Extreme under clause (ii).

Furthermore, section 181(b)(2)(B) of the Act provides that:

The Administrator shall publish a notice in the **Federal Register** no later than six months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

Therefore, under CAA section 181(b)(2)(A), we must determine within six months of the applicable attainment date whether an ozone nonattainment area has attained the 1-hour ozone standard. If we find that a serious area

has not attained the standard and does not qualify for an extension, it is reclassified by operation of law to severe.³ CAA section 181(b)(2)(A) requires us to base our determination of attainment or finding of failure to attain on the area's design value as of its applicable attainment date, which for the Washington nonattainment area is November 15, 1999.

The 1-hour ozone NAAQS is 0.12 ppm not to be exceeded on average more than one day per year over any three year period. 40 CFR 50.9 and Appendix H. Under our policies, we determine if an area has attained the one-hour standard by calculating, at each monitor, the average number of days over the standard per year during the preceding three year period.⁴ See 40 CFR part 50, Appendix H.

If an area has at least one monitor recording four or more exceedances during a 3-year period, then the average number of exceedance days per year exceeds one, and the area has not attained the standard.

Conversely, if an area has all monitors with an average number of exceedance days per year less than or equal to one, only then has the area attained the standard.

For this proposal, we have based our determination of whether the Washington nonattainment area attained the 1-hour ozone standard by November 15, 1999, on both the area's design value and the average number of exceedance

days per year during the 1997 to 1999 period.

The effect of a reclassification to severe on the Washington nonattainment area is to set a new attainment deadline for the area of November 15, 2005, and to require the State to submit a SIP revision that meets the CAA's requirements for severe ozone nonattainment areas. See CAA sections 181(a) and 182(i). Under section 182(i), we may set the submittal deadlines for these new planning requirements.

B. What Is the Applicable Ozone Season Air Quality Data for the Washington Area?

Table 3 lists the average number of days when ambient ozone concentrations exceeded the one-hour ozone standard at each monitoring site in the Washington area for the period 1997–1999. The ozone design value for each monitor is also listed for the same period. A complete listing of the ozone exceedances for each monitoring site, as well as EPA's calculations of the design values, can be found in the docket file for this action. The data in Table 3 show that, for 1997–1999, many monitoring sites in the Washington area averaged more than one exceedance day per year. Therefore, pursuant to section 181(b)(2)(B) of the CAA, we propose to find that the Washington area did not attain the one-hour standard by the November 15, 1999, deadline.

TABLE 3.—AIR QUALITY DATA FOR THE WASHINGTON AREA (1997–1999)

Site	Monitor ID	Number of days over standard	Number of expected days over standard	Average number of expected exceedances (Note 1)	Site design value (ppm)
Tacoma School, Washington, DC	110010025-1	1	1.0	0.3	0.117
River Terrace, Washington, DC	110010041-1	3	3.0	1.0	0.120
McMillan Reservoir, Washington, DC	110010043-1	4	4.0	1.3	0.128
Calvert Co, MD	240090010-1	0	0.0	0.0	0.115
Southern Maryland, Charles Co, MD	240170010-1	4	4.1	1.4	0.125
Frederick Co, MD (Note b)	240210037-1	2	3.0	1.5	0.114
Rockville, Montgomery Co, MD	240313001-1	2	2.0	0.7	0.118
Greenbelt, Prince Georges Co, MD (Note c)	240330002-1	12	12.7	4.2	0.132
Suitland-Silver Hill, Prince Georges Co, MD	240338001-1	6	6.2	2.1	0.126
Arlington Co, VA	510130020-1	4	4.3	1.4	0.126
Chantilly, Fairfax Co, VA	510590005-1	2	2.1	0.7	0.118
Mount Vernon, Fairfax Co, VA	510590018-1	3	3.2	1.1	0.124
Franconia, Fairfax Co, VA (Note b)	510590030-1	1	1.0	0.5	0.118
Seven Corners, Fairfax Co, VA	510591004-1	3	3.0	1.0	0.124
McLean, Fairfax Co, VA	510595001-1	1	1.0	0.3	0.114
Ashburn, Loudoun Co, VA (Note b)	511071005-1	0	0.0	0.0	0.116
Long Park, Prince William Co, VA	511530009-1	1	1.2	0.4	0.115

³ If an area does not have the clean data necessary to show attainment of the 1-hour standard but does have clean air in the year immediately preceding the attainment date and the states comprising the area have fully implemented its applicable SIP, the States may apply to us, under CAA section 181(a)(5), for a one-year extension of the attainment date. We do not discuss this provision further in

this proposal because the Washington area did not have the requisite clean air data.

⁴ See generally 57 FR 13506, April 16, 1992, and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; "Procedures for Processing Bump Ups and Extensions for Marginal Ozone

Nonattainment Areas," dated February 3, 1994. While explicitly applicable only to marginal areas, the general procedures for evaluating attainment in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same Clean Air Act requirements in section 181(b)(2).

TABLE 3.—AIR QUALITY DATA FOR THE WASHINGTON AREA (1997–1999)—Continued

Site	Monitor ID	Number of days over standard	Number of expected days over standard	Average number of expected exceedances (Note 1)	Site design value (ppm)
Widewater, Stafford Co, VA	511790001–1	3	3.0	1.0	0.124
Alexandria City, VA	515100009–1	2	2.1	0.7	0.123

a. A violation occurs when the number of expected exceedances is greater than 3.1 over a 3-year (rolling) period (or a 3-year (rolling) average greater than 1.04). The statistical term “expected exceedances” is an arithmetic average explained at 40 CFR part 50, Appendix H.

b. New monitoring site with only two years (1998 and 1999) of data for the 1997 to 1999 period.

c. Monitor represents the 1997–1999 design value for the Washington area.

Raw data source: U.S. EPA Aerometric Information Retrieval System (AIRS) database.

Several monitors recorded more than two or more exceedances in 1999. These included the McMillan Reservoir monitor in the District, the Southern Maryland, and Greenbelt monitors in Maryland and the Arlington County monitor in Virginia.

VII. Why Did EPA Defer Making a Finding of Nonattainment Regarding the Washington Area’s Attainment Status Beyond the Time Frame Prescribed by the CAA?

For some time, EPA has recognized that pollutant transport can impair an area’s ability to meet air quality standards by the date prescribed in the Act. In March 1995 a collaborative, Federal-state process to assess the ozone transport problem began. Through a two-year effort known as the Ozone Transport Assessment Group (OTAG), EPA worked in partnership with the 37 easternmost states and the District of Columbia, industry representatives, academia, and environmental groups to develop recommended strategies to address transport of ozone and ozone-forming pollutants across state boundaries.

On November 7, 1997, EPA acted on OTAG’s recommendations and issued a proposal (the proposed oxides of nitrogen (NO_x) SIP call, 62 FR 60318) requiring 22 states and the District of Columbia to submit state plans addressing the regional transport of ozone. These SIP revisions will decrease the transport of ozone across state boundaries in the eastern half of the United States by reducing emissions of NO_x (a precursor to ozone formation). EPA took final action on the NO_x SIP call on October 27, 1998 (63 FR 57356). EPA expects the final NO_x SIP call will assist many areas in attaining the 1-hour ozone standard.

On July 16, 1998, in consideration of these factors and the realization that many areas were unable to meet the CAA-mandated attainment dates due to transport, EPA’s then Acting Assistant Administrator, Richard Wilson, EPA

issued an attainment date extension policy.⁵ Under this policy, the attainment date for an area may be extended provided that the following criteria are met: (1) The area is identified as a downwind area affected by transport from either an upwind area in the same state with a later attainment date, or an upwind area in another state that significantly contributes to downwind nonattainment (by “affected by transport,” EPA means an area whose air quality is affected by transport from an upwind area to a degree that affects the area’s ability to attain); (2) an approvable attainment demonstration is submitted along with any necessary, adopted local measures and with an attainment date that shows that the area will attain the 1-hour standard no later than the date that the reductions are expected from upwind areas under the final NO_x SIP call and/or the statutory attainment date for upwind nonattainment areas, *i.e.*, assuming the boundary conditions reflect those upwind reductions; (3) the area has adopted all applicable local measures required under the area’s current classification and any additional measures necessary to demonstrate attainment, assuming the reductions occur as required in the upwind areas; and (4) the area provides it will implement all adopted measures as expeditiously as practicable but no later than the date by which the upwind reductions needed for attainment will be achieved (64 FR 14441, March 25, 1999).

EPA contemplated that when it acted to approve such an area’s attainment demonstration and attainment date extension, it would, as necessary, extend that area’s attainment date to a date appropriate for that area in light of the schedule for achieving the necessary upwind reductions. As a result, the area would no longer be subject to reclassification or “bump-up” for failure

to attain by its original attainment date under section 181(b)(2).

The State of Maryland, the Commonwealth of Virginia and the District of Columbia each submitted a request for such an extension of the attainment date for the Washington nonattainment area. In a January 3, 2001 (66 FR 586), final rule, EPA approved these requests along with attainment demonstration SIP revisions. The Sierra Club and its local chapters filed a petition for review in the United States Courts of Appeals for the appropriate circuits.⁶ The petitions were consolidated in the United States Courts of Appeals for the District of Columbia Circuit.

On July 2, 2002, the United States Courts of Appeals for the District of Columbia Circuit (the Court) issued its ruling that vacated our January 3, 2001, final rule. With respect to the attainment date extension, the Court found that the plain language of Clean Air Act “sets a deadline without an exception for setbacks owing to ozone transport.” The Court said that the EPA was without authority to extend the Washington, DC area’s attainment deadline unless it also ordered the area to be reclassified as a “severe” area.

Because we can no longer grant the Washington area an attainment date extension using the July 16, 1998, policy, we must determine whether the Washington area will be reclassified by operation of law to severe if we issue a final action finding that the area failed to attain.

VIII. Has Air Quality Improved in the Washington Area in Recent Years?

The air quality in the Washington area has improved significantly since the area was designated nonattainment following enactment of the 1990 CAA amendments, when the area’s (1987–1989) ozone design value was 0.165

⁵ Memorandum, “Extension of Attainment Dates for Downwind Transport Areas,” issued July 16, 1998.

⁶ The District of Columbia lies within the jurisdiction of the District of Columbia Circuit and Maryland and Virginia lie within the Fourth Circuit.

ppm. The most recent (*i.e.*, 1999–2001) area-wide ozone data shows a continuing downward trend in the numbers of violations and ozone design

values. The area now has only three monitors violating the standard, and of these, the maximum number of violations is 2.0 at the Greenbelt

monitor in Maryland. The current design value is 0.130 ppm. The 1987–1989, 1997–1999 and 1999–2001 data are summarized in Table 4.

TABLE 4—AIR QUALITY DATA SUMMARY FOR 1987 TO 1989, 1997 TO 1999 AND 1999 TO 2001

Site	Monitor ID	1987 to 1989		1997 to 1999		1999 to 2001	Average number of expected exceedances
		Average number of expected exceedances	Design value	Average number of expected exceedances	Design value		Design value
West End, Washington, DC (Note a)	110010017-1	1.8	0.120	N.D.	N.D.	N.D.	N.D.
Tacoma School, Washington, DC	110010025-1	5.0	0.165	0.3	0.117	1.0	0.117
River Terrace, Washington, DC	110010041-1	N.D.	N.D.	1.0	0.120	0.3	0.120
McMillan Reservoir, Washington, DC	110010043-1	N.D.	N.D.	1.3	0.128	1.6	0.125
Calvert Co, MD	240090010-1	N.D.	N.D.	0.0	0.115	0.0	0.112
Southern Maryland, Charles Co, MD	240170010-1	5.0	0.145	1.4	0.125	0.7	0.121
Frederick Co, MD (Note b)	240210037-1	N.D.	N.D.	1.5	0.114	0.4	0.114
Rockville, Montgomery Co, MD	240313001-1	5.3	0.140	0.7	0.118	0.3	0.113
Greenbelt, Prince Georges Co, MD	240330002-1	6.8	0.157	4.2	0.132	2.1	0.130
Suitland-Silver Hill, Prince Georges Co, MD	240338001-1	7.6	0.163	2.1	0.126	1.4	0.126
Arlington Co, VA	510130020-1	5.4	0.145	1.4	0.126	0.7	0.122
Chantilly, Fairfax Co, VA (Note c)	510590005-1	N.D.	N.D.	0.7	0.118	0.0	0.113
Mount Vernon, Fairfax Co, VA	510590018-1	8.1	0.162	1.1	0.124	0.8	0.121
Franconia, Fairfax Co, VA (Note b)	510590030-1	N.D.	N.D.	0.5	0.118	0.3	0.117
Seven Corners, Fairfax Co, VA (Note d) ...	510591004-1	8.0	0.155	1.0	0.124	0.5	0.111
McLean, Fairfax Co, VA	510595001-1	7.1	0.144	0.3	0.114	0.7	0.115
Ashburn, Loudoun Co, VA (Note b)	511071005-1	N.D.	N.D.	0.0	0.116	0.0	0.106
Long Park, Prince William Co, VA (Note c)	511530009-1	N.D.	N.D.	0.4	0.115	0.0	0.108
Widewater, Stafford Co, VA (Note c)	511790001-1	N.D.	N.D.	1.0	0.124	0.3	0.106
Alexandria City, VA	515100009-1	1.7	0.130	0.7	0.123	0.3	0.117
Fairfax City, VA (Note a)	516000005-1	6.1	0.146	N.D.	N.D.	N.D.	N.D.

Notes:

N.D. denotes no data.

a. Discontinued Monitoring site.

b. New Monitoring site with only two years (1998 and 1999) of data for the 1997 to 1999 period and three years of data for 1999 to 2001.

c. New Monitoring Site with three years of data for 1997 to 1999 and all later periods.

d. Also known as the "Lewinsville" site.

IX. What Actions Has the District, Maryland and Virginia Taken To Improve Air Quality in the Washington Area?

EPA has approved, and the District, Maryland and Virginia have implemented, VOC emission reductions as part of the State's 15 Percent Rate-of-Progress Plan, and VOC and NO_x emission reductions as part of the Post-1996 Rate-of-Progress Plan. The area has already opted into the Federal reformulated gasoline program. For an extensive summary of these plans and the measures currently in place or scheduled for future implementation refer to the preambles of our December 16, 1999 (64 FR at 70471–70474), and January 3, 2001 (66 FR at 589–590), **Federal Register** publications. In addition, since the January 3, 2001, final rule, the District and Virginia have adopted rules to implement the NO_x SIP call with implementation in 2003 and 2004, respectively. Virginia submitted

its rule on June 25, 2002.⁷ See 67 FR 48032, July 23, 2002. We approved the District's rule on November 1, 2001, (66 FR 55099).

X. If We Finalize Our Proposed Rulemaking Reclassifying the Washington Area, What Would Be the Area's New Classification?

As stated previously, section 181(b)(2)(A) of the Act requires that, when an area is reclassified for failure to attain, its reclassification must be the higher of the next higher classification or the classification applicable to the area's ozone design value at the time the notice of reclassification is published in the **Federal Register**. However, no area

⁷ This June 25, 2002, submittal was to set statewide requirements on electric generating utilities. Virginia has already adopted two SIP revisions that effectively impose a 0.15 pounds of NO_x per million BTU heat input on emissions units at two electric generating facilities in the Washington area. On December 14, 2000 (65 FR 78100), EPA approved these two SIP revisions.

can be reclassified as extreme based upon its design value. The official design value of the Washington area based on quality-assured ozone monitoring data from 1997–1999 is 0.132 ppm. The classification corresponding to this value is "marginal" nonattainment. By contrast, the next higher classification for the Washington area is "severe" nonattainment. Because "severe" is a higher nonattainment classification than "marginal," under the statutory scheme, the area would be reclassified to severe nonattainment. Refer to Table 3 above.

XI. What Progress Has the Washington, DC Area Made Towards Planning To Attain the Ozone NAAQS by 2005?

In April 1998, the District, Maryland and Virginia each submitted modeling and a weight of evidence demonstration setting local overall emissions budgets when combined with boundary conditions consistent with the NO_x SIP

call to demonstrate attainment of the 1-hour ozone NAAQS. While the air quality modeling analysis considered projected local emissions levels that were expected to occur by 1999, the calendar year itself is not an input to the air quality model. The air quality model responds only to the meteorology (temperature, wind patterns, etc.) of the selected episode, the ozone and precursor levels at the boundaries of the grid of the area being modeled and the overall change in local emissions levels in the local area. During February 2000, the States submitted SIP revisions that demonstrated that the local overall emissions budgets set by the air quality modeling demonstration could be achieved in 2005 with a combination of Federally promulgated national measures and local measures in the approved SIPs. (For a discussion of these measures and their status as of January 3, 2001, see 66 FR at 589–590, January 3, 2001.)

XII. What Would a Reclassification Mean for the Washington Area?

If reclassified, the Washington area would need to attain the one-hour ozone NAAQS as expeditiously as practicable, but no later than November 15, 2005. The District, Maryland and Virginia would also need to submit SIP revisions addressing all the severe area requirements for the one-hour standard specified in sections 182(a) through 182(d) of the Act. The SIP requirements for severe ozone nonattainment areas include, but are not limited to, the following:

- (1) Attainment demonstration for 2005 and rate-of-progress demonstrations for 2002 and 2005 including adequate on-road mobile emissions budgets for transportation conformity purposes.
- (2) A 25 ton-per-year major stationary source threshold for volatile organic compounds and nitrogen oxides.
- (3) More stringent new source review requirements.
- (4) Enforceable transportation control strategies and measures to offset projected growth in vehicle miles traveled or number of vehicle trips as necessary to demonstrate attainment and to achieve periodic emissions reduction requirements.
- (5) Contingency measures.

XIII. What Are the Transportation Conformity Implications of Reclassification?

The ozone reclassification in and of itself would not immediately affect the applicable motor vehicle emissions budgets in the Washington area. Currently the only applicable motor

vehicle emission budgets for the District, Maryland and Virginia are those for VOC and NO_x in the approved rate-of-progress plan for 1999 and two sets of outyear budgets established for 2015 and for 2020.⁸ Until such time as rate-of-progress and/or 2005 attainment year ozone budgets have been determined to be adequate or are approved, these 1999 budgets apply until 2015, at which point the outyear budgets apply for 2015 and all future years. See 65 FR 40167, July 3, 2000.

Our January 3, 2001, final rule approved motor vehicle emissions budgets for 2005 which were contained within the February 2000 submittals, but the Court's July 2, 2002, decision has vacated our approval action. We had found these budgets to be adequate on June 8, 2000, (65 FR 36439), but have always interpreted the transportation conformity rule such that a final rulemaking action approving a control strategy or maintenance plan SIP renders any prior adequacy determination made for budgets related to that particular control strategy or maintenance plan SIP of no further force or effect. Instead, the final rulemaking governs which budgets apply for conformity purposes. We also interpret our transportation conformity rule to mean that once an approval is vacated the prior adequacy determination is not resurrected. We made the prior adequacy determination based upon the record before us at that time. At the very least, we are now confronted with the fact of the Court's *vacatur* of the January 3, 2001, final rule and thus must consider whether or not the Court's ruling precludes a determination of adequacy of the calendar year 2005 motor vehicle emissions budgets in the February 2000 SIP submissions.

We initiated a new adequacy process with respect to the budgets for 2005 that were contained in the February 2000 plan. On September 9, 2002, we completed the public notice and comment portion of the process to determine the adequacy process. EPA received adverse comments on the adequacy of these budgets, and is currently considering appropriate action in response to those comments. Further information on any findings of adequacy can be found at <http://www.epa.gov/otaq/transp/conform/adequacy.htm>.

Once new severe area budgets are submitted and have been determined adequate, these post-1999 rate-of-progress budgets would set emission

⁸ There are also approved VOC budgets in the 15 percent rate-of-progress plan, but these are effectively superseded by the approved 1999 VOC budgets which are both for a later year and are more stringent. See 40 CFR 93.118.

caps for any post-1999 milestone years (2002 and 2005), and the new attainment year budgets would apply to the 2005 attainment year and all years beyond the attainment year up to the point when an outyear budget has been established.

XIV. How Does the Recent Release of MOBILE6 Interact With Reclassification?

A. What Is the Relationship Between MOBILE6 and the Attainment Year Motor Vehicle Emissions Budgets

The 2005 motor vehicle emissions budgets contained in the February 2000 submittal are not based upon the most recent mobile source emission factors model, MOBILE6. The February 2000 attainment plan SIP submissions relied upon reductions from EPA's Tier 2 Federal motor vehicle control program standards and Sulfur in gasoline rule (the Tier 2/Sulfur program) to in effect demonstrate that the reduction in local emissions between 1990 and 2005 would be greater than or equal to the reduction in local overall emissions assumed in the air quality modeling demonstration. We have always stated that the benefits of the Tier 2 program cannot be accurately estimated until MOBILE6 is released. Before the official release of the MOBILE6 emission factor model, we required States that adopted benefits of the Tier 2/Sulfur program into their attainment demonstrations (and certain other SIP revisions) to submit an enforceable commitment to revise the motor vehicles emissions budgets within either one or two years of the release of the MOBILE6 model. For further detail on our rationale regarding this commitment see 64 FR 70460, December 16, 1999, and 65 FR 46383, July 28, 2000. The District, Maryland and Virginia submitted an enforceable commitment to revise the motor vehicles emissions budgets within one-year of the release of the MOBILE6 model. Because the MOBILE6 model was released on January 29, 2002, (67 FR 4254) the commitment required submittal of revised budgets by January 29, 2003. We believe that approval of this commitment only has context within the framework of an approval of the attainment demonstration under the conditions we laid out in our January 3, 2001, final rule and in the proposed actions leading up to that final action. We have interpreted the Court of Appeals's July 2, 2002, ruling as vacating the approval of this commitment.

We expect that any subsequent motor vehicle emissions budgets submitted to fulfill the severe area requirements

including that of the attainment demonstration will be prepared using the MOBILE6 emissions factor model and pursuant to applicable guidance and policy such as that found in the January 18, 2002, joint memorandum from John S. Seitz and Margo Tsigotis Oge entitled "Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity" (January 18 MOBILE6 policy). Thus, although the obligation to submit MOBILE6 budgets by January 29, 2003, has been vacated, the severe area SIP when submitted must contain budgets based on MOBILE6 modeling.

B. What Is the Relationship Between MOBILE6 and the Post-1999 Rate-of-Progress Requirement

In our guidance documents, the EPA has interpreted the section 182(c)(2) reasonable further progress requirement as mandating volatile organic compounds (VOC) or nitrogen oxides (NO_x) reductions of 3 percent per year, averaged over a 3-year period, for serious and above ozone nonattainment areas that were designated and classified under the 1-hour ozone NAAQS. The EPA refers to these reductions as the rate-of-progress requirement.

The January 18, 2002, MOBILE6 policy guidance indicates that among other things, the motor vehicle emissions budgets in the post-1999 rate-of-progress plans will have to developed using MOBILE6. In this policy we said:

In general, EPA believes that MOBILE6 should be used in SIP development as expeditiously as possible. The Clean Air Act requires that SIP inventories and control measures be based on the most current information and applicable models that are available when a SIP is developed.⁹

Since the area is only now beginning work on the post-1999 rate-of-progress plans as a result of reclassification to severe, these plans will need to be based upon MOBILE6.

The post-1999 rate-of-progress requirement flows from section 182(c)(2)(B) which requires serious and above areas to achieve a 3 percent per year reduction in baseline VOC emissions (or some combination of VOC and NO_x reduction from baseline emissions pursuant to section 182(c)(2)(C)) averaged over each consecutive three-year period after November 15, 1996, until the attainment date.¹⁰ Baseline emissions are the total

amount of actual VOC or NO_x emissions from all anthropogenic sources in the area during the calendar year 1990, excluding emissions that would be eliminated under certain Federal programs and Clean Air Act mandates: phase 2 of the Federal gasoline Reid vapor pressure regulations (Phase 2 RVP) promulgated on June 5, 1990 (see 55 FR 23666); the Federal motor vehicle control program in place as of January 1, 1990 (1990 FMVCP); and certain changes and corrections to motor vehicle inspection and maintenance (I/M) programs and corrections and reasonably available control technology (RACT) that were required under section 182(a)(2).¹¹ We have issued guidance that provides detailed information on for implementing the rate-of-progress provisions of section 182.¹² Basically our guidance requires the calculation of a target level of emissions for each rate-of-progress milestone year. The target level for any rate-of-progress milestone year is the 1990 baseline emissions decreased by the amount of baseline emissions that would be reduced by the 1990 FMVCP and the Phase 2 RVP program by that year *and* reduced by the amount of the mandated minimum reductions (15 percent VOC by 1996, and an additional nine (9) percent VOC, or VOC and NO_x by 1999, * * *). Under our guidance the first rate-of-progress milestone year target levels, for example, the 15 percent VOC reduction by 1996 requirement, starts with the 1990 base year emissions and then subtracts the effects of the 1990 FMVCP and Phase 2 RVP through 1996 and also subtracts the required 15 percent VOC reduction. The 1999 VOC target level starts with the 1996 target level and subtracts the effects between 1996 and 1999 of the 1990 FMVCP and Phase 2 RVP and subtracts the required 9 percent post-1996 reduction. For each target level, our guidance requires the preparation of a 1990 base year inventory "adjusted" to the milestone year (the "1990 adjusted base year inventory") to account for the effects of the 1990 FMVCP and Phase 2 RVP by the milestone year. The adjusted inventory uses 1990 motor vehicle activity levels but emission factors computed by MOBILE6 for the applicable milestone year. For example,

¹¹ These requirements under section 182(a)(2) are known I/M and RACT corrections or I/M and RACT "fix-ups." For further explanation of these see 57 FR at 13503-13504, April 16, 1992.

¹² This includes among others: Guidance on the Post-1996 Rate-of-Progress Plan (RPP) and Attainment Demonstration, EPA-452/R-93-015 (Corrected version of February 18, 1994). An electronic copy may be found on EPA's Web site at <http://www.epa.gov/ttn/oarpg/t1pgm.html> (file name: "post96_2.zip").

preparation of a rate-of-progress plan for 1999 with NO_x substitution requires a 1990 base year inventory for both VOC and NO_x, a 1990 base year VOC inventory adjusted to 1996 and 1990 base year VOC and NO_x inventories inventory adjusted to 1999. Preparation of a rate-of-progress plan for 1999 with NO_x substitution requires a 1990 base year inventory for both VOC and NO_x plus the following seven "adjusted" inventories: 1996 VOC; 1999 VOC and NO_x; 2002 VOC and NO_x and 2005 VOC and NO_x.

One consequence of the need to use MOBILE6 emission factors in the post-1999 rate-of-progress plan is that the area must recompute the 1990 baseline emissions using the MOBILE6 emissions factor model to update the 1990 on-road mobile sources portion of the 1990 base year emission inventory. The area must also calculate post-1999 rate-of-progress target levels by re-iterating the target levels for rate-of-progress requirements for the 1996 and 1999 milestone years.

In addition to vehicle emissions budgets for any applicable milestone year, the post-1999 rate-of-progress requirement will also require the development of a revision to the 1990 base year emissions inventories and development of up to seven 1990 adjusted inventories (VOC for 1996, VOC and NO_x for 1999, VOC and NO_x for 2002, plus VOC and NO_x for 2005).

XV. If the Washington Area Is Reclassified to Severe, What Would Its New Schedule Be?

A. What Would the Attainment Date Be?

If the Washington area is reclassified to severe, the new attainment deadline under section 181(b)(2) would be as expeditious as practicable, but no later than the date applicable to the new classification, *i.e.*, November 15, 2005.

B. When Are the Required SIP Revisions Due?

The District, Maryland and Virginia would be required to submit a SIP that adopts all the severe area requirements. Under section 181(a)(1) of the Act, the new attainment deadline for serious areas reclassified to severe under section 181(b)(2) would be as expeditious as practicable, but no later than the date applicable to the new classification, *i.e.*, November 15, 2005. When we issue any final finding of failure to attain that reclassifies the Washington area, we must also address the schedule by which the District, Maryland and Virginia will be required to submit a SIP revision meeting the severe area requirements. Pursuant to section 182(i), EPA can adjust any

⁹ See Clean Air Act section 172(c)(3) and 40 CFR 51.112(a)(1).

¹⁰ As a serious area the Washington area was required to submit a rate-of-progress plan for a nine (9) percent reduction for the 3-year period November 15, 1996, through November 15, 1999.

applicable deadline (other than the attainment date) as appropriate for any area reclassified under section 181(b) of the CAA. We propose to have the District, Maryland and Virginia submit this SIP by the earlier of the following dates: within one year of the effective date of a final action on the proposed finding of failure to attain and any consequent reclassification or March 1, 2004. If any of the Washington area States fail to submit a complete severe area SIP that addresses the new severe area requirements by the deadline set in a final rule reclassifying this area, we will start a sanctions clock pursuant to CAA section 179(a)(1) for failure to submit a required SIP revision.

EPA believes that this proposed rule provides ample advance notice to the affected jurisdictions that the severe area requirements may become applicable to the Washington area. However, the issuance of the MOBILE6 emission factor model will require the area to recompute the 1990 base year emissions and restate pre-1999 rate-of-progress targets using MOBILE6. This will require significantly more inventory preparation than would have occurred had the MOBILE5 model remained in force and the area could have used the MOBILE5-based 1990 base year emissions inventories and target levels through 1999. A March 1, 2004, submittal deadline will require the jurisdictions to have adopted additional emission control regulations that can allow sources a minimally reasonable time to comply before the start of the 2005 ozone season and, for measures needed solely to meet rate-of-progress requirements, slightly longer to comply before the rate-of-progress deadline of November 15, 2005. This schedule is for all the severe area SIP requirements. We solicit comments on this proposed schedule.

C. What Will Be the Rate-of-Progress and Contingency Measure Schedules?

(1) 2002 Rate-of-Progress Milestone

Section 182(c)(2)(B) requires serious and above areas achieve a 3 percent per year reduction in baseline VOC emissions (or some combination of VOC and NO_x reductions from baseline emissions pursuant to section 182(c)(2)(C)) averaged over each consecutive three-year period after November 15, 1996, until the attainment date. Therefore, a serious area must achieve a 9 percent reduction between November 15, 1996, and November 15, 1999; a severe area with an attainment date of November 15, 2005, additionally has to achieve an additional 9 percent reduction by November 15, 2002, and a

further 9 percent reduction by November 15, 2005.

Under the schedule for submittal of all severe area requirements that is proposed in the preceding section of this document under the heading "B. When are the Required SIP Revisions Due," the rate-of-progress plan for the 2002 milestone year will be due well after the November 15, 2002, milestone date for the first of the post-1999 9 percent reduction requirements.

If sufficient actual reductions occurring by the November 15, 2002, milestone date do not now exist, then Maryland, Virginia or the District can only get reductions after the milestone deadline because, at this point, the States do not have the ability to require additional reductions for a period that has already passed. We believe the passing of the deadline does not relieve Maryland, Virginia or the District from the requirement to achieve the 9 percent reduction in emissions, but rather the 9 percent reduction needs to be achieved as expeditiously as practicable after November 15, 2002.

The approved SIPs for the area contain measures that either were not used in the demonstration of rate-of-progress by 1999 or that generate additional benefits after November 15, 1999, over and above what was credited to the rate-of-progress plan for 1999. Such measures include the National Low Emission Vehicle program in the entire area and, in the District and Maryland portions of the Washington area, beyond RACT reduction requirements on large sources of NO_x. The area also opted into the Federal reformulated gasoline (RFG) program. The second phase of the RFG program, which went into effect on January 1, 2000, also produces reductions creditable towards the 2002 rate-of-progress requirement.

As discussed elsewhere in this document in the section titled "What is the Relationship Between MOBILE6 and the Post-1999 Rate-of-Progress," the CAA specifies the emissions "baseline" from which each emission reduction milestone is calculated. Section 182(c)(2)(B) states that the reductions must be achieved "from the baseline emissions described in subsection (b)(1)(B)." This baseline value is termed the 1990 adjusted base year inventory. Section 182(b)(1)(B) defines baseline emissions (for purposes of calculating each milestone VOC/NO_x emission reduction) as "the total amount of actual VOC or NO_x emissions from all anthropogenic sources in the area during the calendar year of enactment" (emphasis added) and excludes from the baseline the emissions that would be

eliminated by certain specified Federal programs and certain changes to state I/M and RACT rules.¹³ The 1990 adjusted base year inventory must be recalculated relative to each milestone and attainment date because the emission reductions associated with the FMVCP increase each year due to fleet turnover.¹⁴

Therefore, EPA concludes that the area has already implemented measures creditable towards the 2002 rate-of-progress milestone. However, we are not able to conclude that the area has sufficient measures to achieve the required 9 percent reduction by November 15, 2002, in the absence of a full blown rate-of-progress plan for the 2002 milestone year that documents the calculations of the 2002 target levels of emissions, documents how the SIP accounts for expected growth in emissions related activities and contains the requisite demonstration that sufficient creditable reductions have or were projected to occur by November 15, 2002. We have insufficient data concerning what the levels of reductions will be in the area by 2002, what the proper 1990 adjusted base year inventory for 2002 will be or how much emissions growth will occur in the period November 15, 1999, through November 15, 2002. Nor do we have sufficient information to allow us to determine what date will be as expeditiously as practicable after November 15, 2002, for this first post-1999 9 percent rate-of-progress requirement.

EPA proposes that the 2002 rate-of-progress requirement be that the District, Maryland and Virginia submit a rate-of-progress plan that demonstrates that the SIP has sufficient measures to make the required percent reduction by November 15, 2002, or by a date as expeditiously as practicable thereafter.¹⁵ Such SIP revisions will have to demonstrate that any date after November 15, 2002, by which the first post-1999 9 percent rate-of-progress reduction is achieved is that which is as expeditiously as practicable.

(2) 2005 Rate-of-Progress

EPA is not proposing any change to the date by which the second 9 percent increment of post-1999 rate-of-progress

¹³ These are the 1990 FMVCP, Phase 2 RVP, and the I/M and RACT fix-ups.

¹⁴ See U.S. EPA, (1994), Guidance on the Post-1996 Rate-of-Progress Plan (RPP) and Attainment Demonstration, EPA-452/R-93-015 (Corrected version of February 18, 1994). An electronic copy may be found on EPA's Web site at <http://www.epa.gov/ttn/oarpg/t1pgm.html> (file name: "post96_2.zip").

¹⁵ EPA believes that such date cannot be any later than November 15, 2005.

must be achieved. If the currently adopted and approved SIP measures and the current suite of Federal measures will not achieve the required rate-of-progress reductions, we believe the area has sufficient time to adopt and implement measures to achieve the required reductions by November 15, 2005.

(3) Contingency for Failure To Achieve Rate-of-Progress by November 15, 2002

The contingency measures plan must identify specific measures to be undertaken if the area fails to meet any applicable milestone, failure to make rate-of-progress or failure to attain the NAAQS. With respect to the November 15, 2002, milestone, EPA believes that the contingency plan will need to account for any adjustment to the milestone date.

XVI. What Is the Impact of Reclassification on Title V Operating Permit Programs?

Upon reclassification the major stationary source threshold will be lowered from 50 tons per year (TPY) to 25 TPY. Consequently, the District's, Maryland's and Virginia's Title V operating permits program regulations need to cover sources that will become subject to the lower major stationary source threshold. EPA has reviewed the relevant permit program regulations for the Washington area states. This review indicates that the three program regulations will apply the requisite 25 TPY major stationary source threshold to the Washington area if this area is reclassified to severe. No changes to the State's Title V permit program regulations will be required as a result of a reclassification of the Washington area to severe nonattainment.

After any reclassification to severe, additional sources will become subject to the Title V permitting requirements due to the change in the major stationary source threshold from 50 TPY to 25 TPY. Any newly major stationary sources must submit a timely Title V permit application. "A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish." See 40 CFR 70.5(a)(1). The 12 month (or earlier date set by the applicable permitting authority) time period to submit a timely application will commence on the effective date of any reclassification action.

XVII. What Are the Relevant Policy and Guidance Documents?

Commencing with "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992), EPA has issued numerous policy and guidance memoranda and guidance documents related to the attainment demonstration, rate-of-progress and other requirements related to the severe area classification. These documents are too numerous to list here.

Several have already been cited elsewhere in this document.

Several of the documents identified in prior **Federal Register** publications related to the Washington area, for example, those listed at 64 FR at 70469, December 16, 1999, no longer are applicable in this instance because they have dealt with quantifying the benefits of our Tier 2 regulations prior to the release of MOBILE6 and have become unnecessary since the release of the MOBILE6 model and the January 18 MOBILE6 policy.¹⁶ The final mid-course review guidance has been released whereas prior **Federal Register** publications referenced a draft.¹⁷ And the Memorandum, "Extension of Attainment Dates for Downwind Transport Areas," issued July 16, 1998, was declared unlawful by the United States Courts of Appeals for the District of Columbia.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Proposed Action

EPA is proposing to find that the Metropolitan Washington, D.C. serious ozone nonattainment area has failed to attain the one-hour ozone NAAQS by November 15, 1999, the date set forth in the Clean Air Act (CAA or Act) for serious nonattainment areas. If EPA takes final action to issue this proposed finding of failure to attain, the area

¹⁶ These are the two following memoranda: "Guidance on Motor Vehicle Emissions Budgets in One-Hour Attainment Demonstrations," of November 3, 1999, and "1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking," of November 8, 1999.

¹⁷ Memorandum "Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration" from Lydia N. Wegman and J. David Mobley to the Air Division Directors, Regions I-X of March 28, 2002.

would be reclassified as a severe ozone nonattainment area by operation of law. EPA is proposing to require the District of Columbia, the State of Maryland and the Commonwealth of Virginia to submit revisions to its State Implementation Plan (SIP) that adopt the severe area requirements within one year of the effective date of a final action on the attainment determination and any consequent reclassification but not later than March 1, 2004, whichever is sooner. Finally, EPA is proposing to adjust the dates by which the area must achieve a nine (9) percent reduction in ozone precursor emissions to meet the 2002 rate-of-progress requirement and contingency measure requirement as this relates to the 2002 rate-of-progress requirement.

XVIII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "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."

The Agency has determined that the proposed finding of nonattainment would result in none of the effects identified in section 3(f) of the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, determinations of nonattainment and reclassification cannot be said to impose a materially adverse impact on state, local, or tribal governments or communities.

For this reason, the proposed finding of nonattainment and reclassification 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).

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 proposed action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

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 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. EPA also may not issue a regulation that has Federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation. This determination of nonattainment and the resulting reclassification of a nonattainment area by operation of law will not have

substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because this action does not, in and of itself, impose any new requirements on any sectors of the economy, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to these actions.

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).

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.

Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. See 62 FR 60001, 60007-60008, and 60010 (November 6, 1997) for additional analysis of the RFA implications of attainment determinations. Therefore, pursuant to 5 U.S.C. 605(b), I certify that this proposed action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), 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 annual 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 believes, as discussed previously in this document, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, EPA believes that the proposed finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

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

This proposed action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

This proposed action to reclassify the Washington, DC area as a severe ozone nonattainment area and to adjust applicable deadlines 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 81

Air pollution control, National parks, Wilderness areas.

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

Dated: November 4, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02-28845 Filed 11-12-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA-02-13208; Notice 1]

RIN 2137-AD01

Pipeline Safety: Further Regulatory Review; Gas Pipeline Safety Standards

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: RSPA is proposing to change some of the safety standards for gas pipelines. The changes are based on recommendations by the National Association of Pipeline Safety Representatives (NAPSR) and a review of the recommendations by the State Industry Regulatory Review Committee (SIRRC). We believe the changes will improve the clarity and effectiveness of the present standards.

DATES: Persons interested in submitting written comments on the rules proposed in this notice must do so by January 13, 2003. Late filed comments will be considered so far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Or you may submit written comments to the docket electronically at the following Web address: <http://dms.dot.gov>. See the **SUPPLEMENTARY INFORMATION** section for additional filing information.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow by phone at 202-366-4559, by fax at 202-366-4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, or by e-mail at buck.furrow@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Filing Information, Electronic Access, and General Program Information

All written comments should identify the docket and notice numbers stated in

the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging on to <http://dms.dot.gov>, click on "ES Submit." You can also read comments and other material in the docket at <http://dms.dot.gov>. General information about our pipeline safety program is available at <http://ops.dot.gov>.

Background

NAPSR is a non-profit association of officials from State agencies that participate with RSPA in the Federal pipeline safety regulatory program. Each year NAPSR holds regional meetings to discuss safety and administrative issues, culminating in resolutions for program improvement.

In 1990 we asked NAPSR to review the gas pipeline safety standards in 49 CFR part 192. The purpose of the review was to identify standards that NAPSR considered insufficient for safety or not clear enough to enforce. NAPSR compiled the results of its review in a report titled "Report on Recommendations For Revision of 49 CFR part 192," dated November 20, 1992. The report, a copy of which is in the docket of the present proceeding, recommends changes to 40 sections in part 192.

By the time NAPSR completed its report, we had published a notice of proposed rulemaking to change many part 192 standards that we considered unclear or overly burdensome (Docket PS-124; 57 FR 39572; Aug. 31, 1992). Because a few of NAPSR's recommendations related to standards we had proposed to change, we published the report for comment in the PS-124 proceeding (58 FR 59431; Nov. 9, 1993). The PS-124 Final Rule (61 FR 28770; June 6, 1996) included four of NAPSR's recommended rule changes, and we scheduled the remaining recommendations for future consideration. Later, at a meeting on corrosion problems held in San Antonio, Texas on April 28, 1999, we opened NAPSR's recommendations on corrosion control to further public discussion (Docket RSPA-97-2762; 64 FR 16885; April 7, 1999).

In PS-124 we received 79 comments on NAPSR's recommendations, primarily from pipeline trade associations, pipeline operators, and

State pipeline safety agencies. Industry commenters generally opposed most of NAPSR's recommendations on grounds that standards would be changed not for safety reasons or clarity but to make compliance auditing easier. In contrast, the State agencies generally supported NAPSR's recommendations. NAPSR denied it was merely trying to simplify the auditing process, and said its experience provided a unique perspective on which standards are ineffective or inappropriate.

Because industry and State views were so divergent, in October 1997, the American Gas Association (AGA), the American Public Gas Association (APGA), and NAPSR formed SIRRC to iron out their differences over the recommendations. SIRRC agreed on all but eight of the recommendations scheduled for future consideration. A copy of SIRRC's report titled "Summary Report," dated April 26, 1999, is in the docket of the present proceeding.

We have completed our review of NAPSR's 1992 recommendations as updated by SIRRC's 1999 Summary Report. The review also covered a NAPSR resolution on the definition of "service line." Although this resolution was not in NAPSR's 1992 report, SIRRC dealt with the resolution in its Summary Report.

The purpose of the review was to decide which, if any, of NAPSR's recommendations warrant inclusion in a notice of proposed rulemaking. If SIRRC agreed to modify a recommendation, our review focused on that modification. If SIRRC did not reach agreement, we focused on NAPSR's recommendation in light of SIRRC's discussion. Our responses to the recommendations are discussed in the next section of the preamble.

Disposition of NAPSR's Recommendations

This section summarizes NAPSR's recommendations and SIRRC's consideration of those recommendations. It also states our responses to the recommendations. For ease of reference, we have numbered the recommendations according to their sequence in SIRRC's Summary Report. The following table categorizes the recommendations according to the rulemaking status indicated by our responses:

Recommendation No.	Rulemaking status
7, 15, 17, 20, and 26	Included in previous final rule actions.
8, 9, 30	Proposed in "Periodic Updates to Pipeline Safety Regulations (1999)" (Docket RSPA-99-6106; 56 FR 15290; Mar. 22, 2000).

Recommendation No.	Rulemaking status
2, 5, 6, 11, 12, 13, 14, 29 (in part), 31, 32, 35 18, 24, 25, 28, 33 (in part) and 34 (in part).	Proposed in present action. Alternative proposed in present action.
1, 3, 4, 10, 16, 19, 21, 22, 23, 27, 29 (in part), 33 (in part), and 34 (in part).	No rulemaking action.

1. Section 192.3, Definitions of Main and Transmission Line. (SIRRC Summary Report, p. 3)

Recommendation. To help distinguish mains from transmission lines, revise the definition of “main” and the first paragraph of the definition of “transmission line” to read:

- “Main” means a pipeline installed in a community to convey gas to individual service lines or to other mains.

- “Transmission line” means a pipeline, or a series of pipelines, other than a gathering line, that: (a) Transports gas from a gathering line, storage field or another transmission line to a storage field or to one or more distribution systems or other load centers.

SIRRC. The committee reached consensus to modify the recommendation as follows:

- “Main” means a segment of pipeline in a distribution system installed to transport gas to individual service lines or other mains.
- In the present definition of “transmission line,” change “distribution center” to “distribution system” to eliminate the only use of this undefined term in Part 192.

Response: Part 192 defines “distribution line” but not “distribution system.” So substituting “distribution system” for “distribution line” in the present “main” definition and for “distribution center” in the present “transmission line” definition would not necessarily add clarity to either definition. Also, by referring to “mains,” SIRRC’s definition of “main” loops back on itself. Therefore, we are not proposing to adopt the SIRRC’s suggestion.

2. Section 192.3, Definitions of Service Line and Service Regulator. (SIRRC Summary Report, p. 6)

Recommendation. Adopt the following new and amended definitions to bring Part 192 in line with acceptable arrangements of service lines:

- “Customer meter” means the meter that measures the transfer of gas from an operator to a consumer.

- “Service line” means a distribution line that transports gas from a common source of supply to an individual customer, two adjacent or adjoining

residential or small commercial customers, or to an aboveground meter header supplying up to ten residential or small commercial customer meters. A service line terminates at the outlet of the customer meter or at the connection to a customer’s piping, whichever is further downstream, or at the connection to customer piping if there is no meter.

- “Service regulator” means the device on a service line which controls the pressure of gas delivered from a high pressure distribution system to the level at which it is provided to the customer. A service regulator may serve one customer meter, or up to ten customer meters grouped on an aboveground meter header.

SIRRC. The committee suggested modification of the definitions as follows:

- “Customer meter” means the meter that measures the transfer of gas from an operator to a consumer.

- “Service line” means a distribution line that transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold. A service line terminates at the outlet of the customer meter or at the connection to a customer’s piping, whichever is further downstream, or at the connection to customer piping if there is no meter.

- “Service regulator” means the device on a service line which controls the pressure of gas delivered from a higher pressure to the pressure provided to the customer. A service regulator may serve one customer, or multiple customers through a meter header or manifold.

Response. Although § 192.3 already defines the term “customer meter,” the definition of this term is included in the definition of “service line.” SIRRC’s suggestion would merely move the “customer meter” definition to an alphabetical position in § 192.3. Since “customer meter” is used in part 192 in places other than the “service line” definition, we agree that an alphabetical position is preferable. So we are proposing to amend § 192.3 as SIRRC suggested.

Under the part 192 definitions of “service line” and “main,” if an operator runs a single line from main to supply gas to two customers, the single line is itself a main because it is a common source of supply for more than one service line.¹ Typically such single-line installations serve two or more adjacent single-family residences through branch lines connected to the single line. They also serve apartment buildings and shopping centers through meter manifolds, or meter headers.

Because these single lines are more like service lines than mains—their size is small, their pressure is low, and they are located on private property rather than under a public street or alley—many State pipeline safety agencies have granted waivers for the lines, permitting operators to treat them as service lines. Consequently, under most State waivers, the single lines may be designed, installed, operated, and maintained as service lines. They do not have to meet any part 192 standard that applies strictly to mains. For example, § 192.327(b) requires a minimum burial depth for mains (24 in) that is greater than the depth § 192.361 requires for service lines (12 or 18 in). Single-line installations serving adjacent customers may also increase safety by minimizing connections to mains. These connections are susceptible to leaks and damage accidentally caused by street excavation activities.

Since SIRRC’s suggested definition of “service line” is consistent with State waivers we considered appropriate, we are proposing to amend § 192.3 by revising the definition of “service line” as SIRRC suggested. Note, however, that the proposed definition uses the general term “meter manifold” instead of “meter header or manifold.” If adopted as final, the proposed definition would eliminate the need for similar waivers in the future.

We are also proposing to adopt SIRRC’s suggested definition of “service regulator.” SIRRC’s definition is

¹ Section 192.3 defines “service line” as “a distribution line that transports gas from a common source of supply to (1) a customer meter or the connection to a customer’s piping, whichever is farther downstream, or (2) the connection to a customer’s piping if there is no customer meter.” In addition, “main” is defined as “a distribution line that serves as a common source of supply for more than one service line.”

consistent with state waivers that distinguish regulators connected to customer meter manifolds from regulating stations that must be inspected under § 192.739.

We are particularly interested in receiving comments on how the term “small commercial customers” might be stated differently or defined to minimize potential confusion in identifying the customers involved. Would it be appropriate to consider a “small commercial customer” as a business that receives volumes of gas similar to the volumes that a residential customer receives?

3. Section 192.55(a)(2), Steel Pipe. (SIRRC Summary Report, p. 8)

Recommendation. Delete § 192.55(a)(2)(ii), which provides requirements for the use of new steel pipe manufactured before November 12, 1970.

SIRRC. The committee suggested that § 192.55(a)(2)(ii) should not be deleted.

Response. Although NAPSRS initially thought § 192.55(a)(2)(ii) was obsolete, several PS-124 commenters said the section should remain because operators have stockpiles of steel pipe manufactured before 1970. The SIRRC Summary Report indicates operators continue to stock such pipe. We concur with SIRRC that § 192.55(a)(2)(ii) should not be removed.

4. Section 192.65, Transportation of Pipe. (SIRRC Summary Report, p. 9)

Recommendation. Delete § 192.65(b), which provides requirements for the use of certain steel pipe transported by railroad before November 12, 1970.

SIRRC. The committee agreed that § 192.65(b) should not be deleted.

Response. Although NAPSRS initially thought § 192.55(b) was obsolete, several PS-124 commenters said they had stockpiled pipe manufactured before 1970. In addition, the SIRRC Summary Report indicates that operators still have this pipe and that it may have been transported by railroad. We concur with the SIRRC's suggestion.

5. Section 192.123, Design Limitations for Plastic Pipe. (SIRRC Summary Report p. 10)

Recommendation. Delete the second sentence of § 192.123(b)(2)(i), which allows plastic pipe manufactured before May 18, 1978, and strength rated at 73 °F to be used at temperatures up to 100 °F.

SIRRC. The committee agreed that the second sentence of § 192.123(b)(2)(i) should be deleted.

Response. NAPSRS thought the second sentence of § 192.123(b)(2)(i) was

obsolete. However, the PS-124 comments indicated that several utilities had inventories of plastic pipe manufactured before May 18, 1978, that they intended to use as replacement pipe. In contrast, the SIRRC Summary Report states that the committee members were unaware of any pre-1978 plastic pipe in operators' stocks. Moreover, the committee members had reservations about using plastic pipe of that vintage.

Assuming the SIRRC Summary Report generally reflects the present status of operators' stocks of plastic pipe, we are proposing to delete the second sentence of § 192.123(b)(2)(i) as obsolete. If this proposal were adopted as final, any stockpiled pre-1978 thermoplastic pipe whose long-term hydrostatic strength was determined at 73 °F could not be used above that temperature. We are particularly interested in hearing from industry commenters whether they still have any stockpiles of this pipe that they plan to use at temperatures above 73 °F.

6. Section 192.197(a), Control of the Pressure of Gas Delivered From High-pressure Distribution Systems. (SIRRC Summary Report, p. 11)

Recommendation. In § 192.197(a), change “under 60 psig” to “60 psig or less.”

SIRRC. The committee agreed that § 192.197(a) should be changed as NAPSRS recommended.

Response. Section 192.197(a) provides that in distribution systems operated “under 60 psig (414 kPa) gage,” if service regulators meet certain criteria, no other pressure limiting devices are required. However, § 192.197(b) states that if those criteria are not met in systems operating at “60 psig (414 kPa) gage, or less,” additional pressure control is required. Thus there is a 1 psi discrepancy between these two sections. We agree with SIRRC that § 192.197(a) should be in sync with § 192.197(b), particularly since § 192.197(c) applies to systems in which the operating pressure “exceeds 60 psig (414 kPa) gage.” Therefore, we are proposing to change § 192.197(a) as NAPSRS recommended.

7. Section 192.203(b)(2), Instrument, Control, and Sampling Pipe and Components. (SIRRC Summary Report, p. 12)

Recommendation. In § 192.203(b)(2), change “takeoff line” to “instrument, control, and sampling line” to clarify the lines on which a shutoff valve must be installed.

SIRRC. The committee agreed the recommended change to § 192.203(b)(2) is not needed.

Response. In Docket PS-124, we modified § 192.203(b)(2) by excepting takeoff lines that can be isolated from sources of pressure by other valving. The SIRRC Summary Report indicates this exception resolved NAPSRS's concern about § 192.203(b)(2). Therefore, we are adopting the SIRRC consensus that the recommended rulemaking action is not needed.

8. Section 192.225(a), Welding: General. (SIRRC Summary Report, p. 13)

Recommendation. Change § 192.225(a) to require qualification of welding procedures according to “American Petroleum Institute (API), American Society of Mechanical Engineers (ASME), or other standards.”

SIRRC. The committee agreed the recommended change is needed. However, it suggested the term “other standards” should be changed to “other accepted pipeline welding standards.”

Response. We proposed to adopt the core of NAPSRS's recommendation in the proceeding called “Periodic Updates to Pipeline Safety Regulations (1999)” (56 FR 15290; Mar. 22, 2000). We proposed to amend § 192.225(a) to require operators to qualify welding procedures under either Section 5 of API 1104, “Welding of Pipelines and Related Facilities,” or Section IX of the ASME Boiler and Pressure Vessel Code. However, our proposal did not include allowing the use of “other accepted pipeline welding standards,” as SIRRC suggested, because we are not aware of any other generally accepted pipeline welding standards.

9. Section 192.241(a), Inspection and Test of Welds. (SIRRC Summary Report, p. 14)

Recommendation. Change § 192.241(a) to require that visual inspection of welding be conducted “by an inspector qualified by appropriate training and experience.”

SIRRC. The committee agreed the recommended change is needed. However, it suggested the term “inspector” should be changed to “person.”

Response. In the proceeding called “Periodic Updates to Pipeline Safety Regulations (1999)” (56 FR 15290; Mar. 22, 2000), we proposed to amend § 192.241(a) as NAPSRS recommended. Although we overlooked SIRRC's suggestion to use “person” instead of “inspector,” we will consider the suggestion in developing the final rule.

10. Section 192.285(c) and (d), Plastic Pipe: Qualifying Persons to Make Joints. (SIRRC Summary Report, p. 15)

Recommendation. In § 192.285, revise paragraph(c) to require that persons who join plastic pipe requalify annually to make joints. Also, revise paragraph (d) to require that operators maintain certain records for use in monitoring personnel qualifications.

SIRRC. The committee did not agree that NAPSR's recommended rule changes were needed. However, the committee did agree that in § 192.285(d) the term "his" should be replaced by a term that is not gender-specific.

Response. NAPSR was concerned that while most newly installed distribution lines are made of plastic pipe, the qualification requirements for persons who join plastic pipe are less stringent than the qualification requirements for persons who weld steel pipe. NAPSR felt the plastic pipe joining and welder qualification requirements should be comparable because the consequences of failure of a plastic pipe joint may be just as severe as the consequences of failure of a welded joint.

We do not believe NAPSR's reasoning is sufficient to justify stronger plastic pipe joining requirements. The skill needed for joining plastic pipe is so much simpler than the skill needed for welding steel pipe that the welding requirements cannot reasonably serve as a basis for establishing more stringent plastic pipe joining requirements. Therefore, we are not proposing to adopt NAPSR's recommended rule changes.

It is worth noting, though, that after SIRRC completed its report, we published new qualification of personnel rules in Subpart N of Part 192. The competency evaluations required by these rules should enhance the qualifications of persons who make plastic pipe joints.

Section 192.285(d) now uses the term "his." As SIRRC suggested, we are proposing to change this term to "the operator's."

11. Section 192.311, Repair of Plastic Pipe. (SIRRC Summary Report, p. 18)

Recommendation. Remove the requirement from § 192.311 that a "patching saddle" must be used to repair harmful damage to new plastic pipelines if the damaged pipe is not removed.

SIRRC. The committee agreed the recommended change is needed.

Response. We concur with NAPSR that the meaning of "patching saddle" is unclear, although we have stated the term implies a plastic saddle adhered to

pipe. Still, there are various means available to effect safe repairs, and we do not think it's necessary to limit the method of repair. Section 192.703(b) would forbid the use of any method that would result in an unsafe condition. So we are proposing to amend § 192.311 as NAPSR recommended.

12. Section 192.321(e), Installation of Plastic Pipe; § 192.361(g), Service Lines: Installation. (SIRRC Summary Report, p. 19)

Recommendation. To prevent underground plastic pipe from being damaged by electrically charged tracer wire and to maintain wire integrity, require separation between pipe and wire, where practical, and require that tracer wire be protected against corrosion.

SIRRC. The committee agreed to accept NAPSR's recommendation. It also agreed that § 192.321, which applies to mains and transmission lines, and § 192.361, which applies to service lines, should be changed as follows:

- Revise § 192.321(e) to read as follows:
 - (e) Plastic pipe that is not encased must have an electrically conducting wire or other means of locating the pipe while it is underground. Tracer wire shall not be wrapped around the pipe and contact with the pipe shall be minimized. Tracer wire or other metallic elements installed for pipe locating purposes shall be resistant to corrosion damage, either by use of coated copper wire or by other means.
 - Establish § 192.361(g) to match proposed § 192.321(e).

Response. Although there have been only a few instances where highly charged tracer wire damaged buried plastic pipe, we believe separating wire from pipe wherever practical is a reasonable safeguard. It is also reasonable that tracer wire or other metallic means of pipe locating be resistant to corrosion. Therefore, we are proposing to adopt SIRRC's consensus by revising § 192.321(e) and adding § 192.361(g) as set forth below in the proposed amendments section of this notice.

We recognize that continuous separation may not be ensured when wire and pipe are installed together in the same hole made by trenchless technology. In fact, in such cases the wire is often randomly taped to the pipe to control separation during installation. The proposed requirement to minimize contact with the pipe should not deter this common installation practice.

Note that part 192 does not now require that underground plastic service lines have a means for locating the lines.

However, operators commonly use tracer wire for this purpose as they do under existing § 192.321(e) for locating underground plastic mains and transmission lines.

13. Section 192.353(a), Customer Meters and Regulators: Location. (SIRRC Summary Report, p. 21)

Recommendation. Amend § 192.353(a) to emphasize that vehicular damage is a type of damage from which meters and service regulators must be protected.

SIRRC. Although the committee members agreed that the existing rule implicitly requires protection from vehicular damage, they did not agree on the need to emphasize this type of damage. Industry members thought emphasizing vehicular damage would cause more disputes with government inspectors over what level of protection is needed.

Response. In enforcing § 192.353(a), our position has been that the provision that meters and service regulators must be protected from "corrosion and other damage" requires reasonable protection from vehicular damage where warranted. SIRRC's Summary Report supports this position. Furthermore, AGA's "Guide for Gas Transmission and Distribution Piping Systems," which advises operators on compliance with Part 192, recognizes this requirement. It states with regard to § 192.353(a) that if the potential for vehicular damage is evident, the meter or service regulator should be protected or an alternate location selected.

NAPSR reported that its members had found meter sets that were damaged by vehicles or were at serious risk of such damage. When this information is considered in light of the industry's apparent understanding of the present rule, it indicates some operators may have been lax in providing needed protection. Emphasizing vehicular damage in the present rule should at least cause operators to pay more attention to the problem and perhaps reduce the risk of damage. So we are proposing to adopt NAPSR's recommendation by amending § 192.353(a) to emphasize vehicular damage.

Although § 192.353(a) affects design and does not apply to pipelines constructed before it went into effect, protection from vehicular damage is also a safety concern on earlier constructed pipelines. These pipelines, however, are subject to the general maintenance standard of § 192.703(b), which requires operators to correct any pipeline that becomes unsafe. If the safety of a meter set is jeopardized by

vehicular traffic, the operator would have to take action under § 192.703(b) to correct the problem.

14. *Section 192.457(b)(3), External Corrosion Control: Buried or Submerged Pipelines Installed Before August 1, 1971; 192.465(e), External Corrosion Control: Monitoring. (SIRRC Summary Report, p. 23)*

Recommendation. Amend §§ 192.457(b) and § 192.465(e) to clarify the meaning of “electrical survey” and what circumstances make an electrical survey “impractical.” Also, require operators to consider all relevant information when using an alternative to an electrical survey.

SIRRC. The committee concluded that electrical surveys are seldom used on distribution systems, so there is no advantage to requiring electrical surveys as a preferred corrosion inspection method on distribution systems. SIRRC further concluded that if electrical surveys are not used, all available information should be used to determine if active corrosion exists. The committee agreed that the second sentence of § 192.457(b), as it relates to distribution lines, and § 192.465(e) should be changed to read as follows:

- § 192.457(b):

The operator shall determine the areas of active corrosion by electrical survey or by analysis and review of the pipeline condition. Analysis and review shall include, but is not limited to, leak repair history, exposed pipe condition reports, and the pipeline environment. For the purpose of this section, an electrical survey is a series of closely spaced pipe-to-soil readings over a pipeline which are subsequently analyzed to identify any locations where a corrosive current is leaving the pipe.

- § 192.465(e):

(i) For transmission pipelines, after the initial evaluation required by paragraphs (b) and (c) of § 192.455 and paragraph (b) of § 192.457, each operator shall, not less than every 3 years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, or where an electrical survey is impractical, by analysis and review of the pipeline condition. Analysis and review shall include, but is not limited to, leak repair history, exposed pipe condition reports, and the pipeline environment.

(ii) For distribution pipelines, after the initial evaluation required by paragraphs (b) and (c) of § 192.455 and paragraph (b) of § 192.457, each operator

shall, not less than every 3 years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey or by analysis and review of the pipeline condition. Analysis and review shall include, but is not limited to, leak repair history, exposed pipe condition reports, and the pipeline environment.

(iii) For the purpose of this section, an electrical survey is a series of closely spaced pipe-to-soil readings over a pipeline which are subsequently analyzed to identify any locations where a corrosive current is leaving the pipe.

SIRRC also agreed that “pipeline environment” refers to whether soil resistivity is high or low, wet or dry, contains contaminants that may promote corrosion, or has any other known condition that might influence the probability of active corrosion.

Response. We recently revised the corrosion control regulations for hazardous liquid and carbon dioxide pipelines in 49 CFR part 195 (Docket RSPA-97-2762; 66 FR 66994; Dec. 27, 2001). In doing so, we relied on SIRRC’s suggestion on monitoring unprotected gas transmission lines as a basis for revising the requirement to monitor unprotected pipe (see 49 CFR 195.573(b)). Because we believe SIRRC’s approach is reasonable for both transmission and distribution lines, we are proposing to adopt the SIRRC suggestion on monitoring these lines by revising § 192.465(e) as set forth below in the proposed amendments section of this notice.

However, rather than change the second sentence of § 192.457(b) as SIRRC suggested, we are proposing to delete the second sentence because we think it’s unnecessary. This sentence, which is repeated in § 192.465(e), is no longer needed in § 192.457(b) because the time for completing the initial evaluation of the need for corrosion control required by § 192.457(b) has expired. All subsequent evaluations are required by § 192.465(e). Also, we are proposing to move the definition of “active corrosion,” now in § 192.457(c), to § 192.465(e).

15. *Section 192.459, External Corrosion Control: Examination of Buried Pipeline When Exposed. (SIRRC Summary Report, p. 27)*

Recommendation. Amend § 192.459 to clarify that when an operator examines the exposed portion of a buried pipeline, the operator must determine the condition of the coating

and keep a record of the condition under § 192.491.

SIRRC. The committee agreed that records of coating condition are important in evaluating the overall condition of a pipeline, and that this information helps meet the continuing surveillance and active corrosion rules. The committee suggested that § 192.459 be revised to read as follows:

Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined to determine the condition of the coating, or if the pipeline is bare or the coating is deteriorated, the exterior condition of the pipe. A record of the examination results shall be made in accordance with § 192.491(c). If external corrosion is found, remedial action must be taken to the extent required by § 192.483 and the applicable paragraphs of §§ 192.485, 192.487, or 192.489.

Response. In light of NAPS’ recommendation and an earlier recommendation by the National Transportation Safety Board on inspecting exposed pipe, we revised § 192.459 to require that operators determine the extent of any corrosion that is found on the exposed portion of a pipeline (64 FR 56981, Oct. 22, 1999). At a minimum, the present rule requires that operators inspect exposed pipelines to see if the coating on coated pipe has deteriorated. In addition, § 192.491(c) requires a record of each inspection “in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist.” Thus we have essentially adopted the SIRRC consensus, because the combination of § 192.459 and § 192.491(c) adequately addresses the need to examine and record the condition of coating on exposed coated pipe.

16. *Section 192.467(d), External Corrosion Control: Electrical Isolation (SIRRC Summary Report, p. 28)*

Recommendation. Amend § 192.467(d) to require annual electrical tests on casings to determine if there is contact with the encased pipe. Also, require remedial action according to Recommendation No. 19 if contact is found.

SIRRC. The committee did not reach agreement on the need to conduct annual tests for shorted casings, although consensus was reached on remedial action as discussed below regarding Recommendation No. 19. Industry’s position on annual testing was that separate tests on casings are unnecessary as long as the pipe potential is above –850Mv. NAPS’ position was that because a shorted

casing shields encased pipe from protective current, the encased pipe can corrode regardless of the potential of pipe outside the casing.

Response. A large majority of PS-124 commenters opposed NAPS's recommendation on the ground that no correlation had been found between shorted casings and corrosion of the encased pipe. One commenter alleged that the purpose of § 192.467(c), which requires isolation of gas pipe from casings, is to maintain protective current levels.

Also, several commenters addressed the shorted casing issue in response to our San Antonio meeting notice. Five persons said shorts should be cleared because using more protective current to offset the short could have adverse effects. Two other commenters said that clearing shorts can be costly if the line must be taken out of service or replaced, and that there is no consensus on the adequacy of other remedial measures. Another San Antonio commenter suggested the present electrical isolation requirement of § 192.467(c) is not needed since cathodic protection has to meet the part 192 criteria for adequacy. In this regard, AGA's Gas Piping Technology Committee (GPTC) has submitted a rulemaking petition to rescind the requirement to isolate gas pipe from metallic casings, arguing there are no safety benefit from clearing shorted casings.

Considering the conflicting opinions on the need to clear shorted casings to prevent pipe corrosion, we have decided not to propose to adopt NAPS's recommendation for annual testing. Instead we will consider the recommendation in a separate rulemaking proceeding called "Pipeline Safety: Controlling Corrosion on Gas Pipelines" (RIN 2137-AD63). In that proceeding, we will examine the need to change part 192 to improve the industry's corrosion control practices in light of new technology and the new requirements for hazardous liquid and carbon dioxide pipelines in 49 CFR part 195.

Deferring the recommendation also will give us time to gather more information on the shorted casing issue. We are particularly interested in receiving comments from anyone who has empirical data on the relation of shorted casings to pipe corrosion.

17. Section 192.475(c), Internal Corrosion Control: General. (SIRRC Summary Report, p. 29)

Recommendation. Amend § 192.475(c) to express the permissible level of hydrogen sulfide in parts-per-million as well as grains.

SIRRC. The committee agreed no further rulemaking action is needed.

Response. The PS-124 Final Rule included NAPS's recommended change to § 192.475(c).

18. Section 192.479, Atmospheric Corrosion Control: General. (SIRRC Summary Report, p. 30)

Recommendation. Require all aboveground pipelines exposed to the atmosphere to meet the same atmospheric corrosion control and remedial requirements, no matter when the pipeline was installed.

SIRRC. The resolution of the committee was that all exposed aboveground pipe should be subject to the same atmospheric protection standards. The committee agreed that § 192.479 should be revised to read as follows, and explained that "active corrosion" does not include non-damaging corrosive films:

(a) Each aboveground pipeline or portion of a pipeline that is exposed to the atmosphere must be cleaned and either coated or jacketed with a material suitable for the prevention of atmospheric corrosion. An operator need not comply with this paragraph, if the operator can demonstrate by test, investigation, or experience in the area of application that active corrosion does not exist.

(b) If active corrosion is found on an aboveground pipeline or portion of pipeline, the operator shall—

(1) take prompt remedial action consistent with the severity of the corrosion to the extent required by the applicable paragraphs of §§ 192.485, 192.487, or 192.489; and

(2) clean and either coat or jacket the areas of atmospheric corrosion with a material suitable for the prevention of atmospheric corrosion.

Response. Section 192.479 prescribes atmospheric protection requirements according to the date of pipeline installation. Pipelines installed after July 31, 1971, must be entirely protected from atmospheric corrosion, except where the operator can demonstrate that a corrosive atmosphere does not exist. In contrast, pipelines installed before August 1, 1971, need only be protected where atmospheric corrosion has progressed to the point that remedial action is required under § 192.485, § 192.487, or § 192.489. Periodic monitoring to determine the need for remedial action is required by § 192.481.

As previously stated, we recently revised the corrosion control regulations in 49 CFR part 195 governing hazardous liquid and carbon dioxide pipelines. The old rule on protection from atmospheric corrosion (§ 195.416(i))

required full protection of all pipelines exposed to the atmosphere, regardless of the date of installation. Based on San Antonio comments that the old rule was overly burdensome, we revised the rule to allow operators to avoid coating pipelines they demonstrate will have either a light surface oxide (a non-damaging corrosion film) or atmospheric corrosion that will not affect safe operation before the next scheduled inspection (§ 195.581).

We believe § 195.581 is consistent with SIRRC's suggested change of § 192.479. Section 195.581 requires the same level of protection for old and new pipelines. Also the exceptions for a light surface oxide and corrosion that will not need remedial action before the next scheduled inspection are equivalent to SIRRC's exception of non-active corrosion. One of our goals in revising the Part 195 corrosion control regulations was to establish similar corrosion control requirements for gas and liquid pipelines wherever appropriate. Therefore, in keeping with this goal, we are proposing to use § 195.581 instead of SIRRC's suggestion as the basis for changing § 192.479. The existing standards for remedial action, §§ 192.485, 192.487, and 192.489, will provide a benchmark for any demonstrations that protection is not required before the next inspection.

NAPS did not recommend any change to the periodic monitoring requirements of § 192.481. These requirements are comparable to the monitoring requirements for hazardous liquid and carbon dioxide pipelines under § 195.583. Both sections require monitoring for atmospheric corrosion at least every 3 years for onshore pipelines and every year for offshore pipelines. And both sections require remedial action if harmful atmospheric corrosion is found. However, § 195.583 specifies particular pipeline features, such as soil-to-air interfaces, that must be inspected, and specifies what remedial action to take. Although these differences are minor, we think the monitoring requirements for gas and hazardous liquid pipelines should be in accord. Therefore, we are proposing to amend § 192.481 to comport with § 195.583.

PS-124 commenters representing industry largely objected to NAPS's recommendation to treat old and new pipelines alike. They feared they would have to fully protect all pre-August 1971 pipelines regardless of whether harmful corrosion was present. However, there is no basis for this concern under proposed § 192.479. Operators would not have to protect any pre-1971 pipeline or portion of pipeline for

which the operator demonstrates by test, investigation, or experience appropriate to the environment of the pipeline that corrosion will only be a light surface oxide or not affect safe operation before the next scheduled inspection. We believe this approach is consistent with the present rule.

19. Section 192.483(d), Remedial Measures: General. (SIRRC Summary Report, p. 32)

Recommendation. Specify what operators must do to protect carrier pipe when a shorted casing cannot be cleared.

SIRRC. The committee agreed that § 192.483(d) should be established to read as follows:

(d) If it is determined that a casing is electrically shorted to a pipeline, the operator shall:

- (1) Clear the short, if practical;
- (2) Fill the casing with a corrosion inhibiting material;
- (3) Monitor for leakage with leak detection equipment at least once each calendar year with intervals not exceeding 15 months; or

(4) Conduct an initial inspection with an internal inspection device capable of detecting external corrosion in a cased pipeline, and repeat at least every 5 years at intervals not exceeding 63 months.

Response. As stated above in response to Recommendation No. 16, there is conflicting information on the need to clear shorted casings. Therefore, we are not now proposing to adopt SIRRC's suggested options for dealing with shorted casings. Instead, as with Recommendation No. 16, we will consider this recommendation in a separate rulemaking proceeding called "Pipeline Safety: Controlling Corrosion on Gas Pipelines" (RIN 2137-AD63).

20. Section 192.483(e), Remedial Measures: General. (SIRRC Summary Report, p. 34)

Recommendation. Amend § 192.483 to refer to appropriate consensus standards that are to be used in determining the remaining strength of corroded pipe.

SIRRC. The committee agreed that further rulemaking action is not needed.

Response. The Final Rule in Docket PS-124 covered NAPS's recommendation in an amendment to § 192.485(c). Thus, we agree with SIRRC that further action is not needed.

21. Section 192.489(b), Remedial Measures: Cast Iron and Ductile Iron Pipe. (SIRRC Summary Report, p. 35)

Recommendation. Clarify that internal sealing of graphitized pipe is not a method of strengthening the pipe.

SIRRC. The committee agreed that the problem of graphitization should be addressed case-by-case rather than by changing § 192.489 as NAPS recommended.

Response. New technology may result in liners that strengthen as well as seal pipe. Therefore, we agree with SIRRC that § 192.489(b) should not be changed as NAPS recommended.

22. Sections 192.505(a) and 192.507, Test Requirements. (SIRRC Summary Report, p. 36)

Recommendation. Amend §§ 192.505 and 192.507 to clarify that the test pressure must be high enough to substantiate the maximum allowable operating pressure (MAOP) under § 192.619(a)(2)(ii).

SIRRC. The committee did not reach an agreement on this recommendation. NAPS members contended some operators have not substantiated MAOP because §§ 192.505 and 192.507 do not specify a minimum test pressure. On the other hand, industry members thought that because § 192.503(a)(1) already requires that pressure tests substantiate MAOP under § 192.619, there is no need to repeat the requirement in §§ 192.505 and 192.507.

Response. We addressed this issue once before. In 1988 we amended § 192.503(a)(1) specifically to indicate that § 192.619 prescribes the minimum test pressure needed to substantiate MAOP (53 FR 1635). We think this earlier action adequately clarified the minimum test pressures, and no further action is needed.

23. Sections 192.509(b) and 192.511(b) and (c), Test Requirements. (SIRRC Summary Report, p. 37)

Recommendation. To establish consistent leak test pressures for mains and service lines, require that non-plastic service lines operated at less than 1 psig be tested to at least 10 psig. Also, require that each main and service line operated at 1 psig or more be tested to 90 psig or 1.5 times the intended operating pressure, whichever is higher.

SIRRC. The committee did not reach a consensus on this recommendation. Industry members were concerned that additional equipment would be needed to test above 90 psig, and that testing existing service lines at higher pressures (as when service is reinstated or connected to a new main) could cause failures. NAPS countered that operators could use plastic pipe test equipment, and that a test failure indicates the line is unsafe.

Response. NAPS felt the minimum leak test pressures prescribed by §§ 192.509(b) and 192.511(b) and (c) for

mains and service lines should be the same because mains and service lines are operated together. NAPS also felt the resulting safety factors should not diminish as operating pressures increase, as they do under the present rules. Many PS-124 commenters, including some operators, agreed with NAPS. However, AGA and other operators said there is no need to leak test steel mains and service lines operating at less than 100 psig at 1.5 times operating pressure. These commenters argued that the purpose of leak tests is not to assure the pipeline is unlikely to fail at operating pressure, but to verify that the pipeline does not leak.

The regulatory history does not explain why minimum leak test pressures under §§ 192.509(b) and 192.511(b) and (c) are not consistent. Nevertheless, lack of consistency, by itself, does not justify additional or more stringent test requirements. A link between inconsistency and safety would be needed, and NAPS did not establish such a link. Also, because only tests for leaks rather than pipeline integrity are at issue, we do not think safety factors are relevant to determining if the present leak test pressures are appropriate. Therefore, we are not proposing to adopt NAPS's recommendation.

24. Section 192.517, Records. (SIRRC Summary Report, p. 39)

Recommendation. To aid compliance investigations, amend § 192.517 to require that operators keep records of leak tests done under § 192.509 for pipelines to operate below 100 psig, of leak tests done under § 192.511 for service lines, and of leak tests done under § 192.513 for plastic pipelines.

SIRRC. The committee disagreed about what information is needed in leak test records. Also, industry members were concerned that distribution operators would have to keep a very large volume of individual records of limited use.

Response. Section 192.517 requires operators to record certain information about pressure tests done under §§ 192.505 and 192.507 to qualify steel pipelines to operate at 100 psig or more. NAPS recommended that we extend this requirement to other pipelines that are pressure tested for leaks. While a few PS-124 commenters supported the recommendation, most did not. Those who opposed the recommendation generally argued that since leak tests are not as significant as tests done under §§ 192.505 and 192.507, it is unnecessary to maintain the same information about both types of tests.

Without appropriate records, government inspection personnel have a difficult job of determining if required leak tests were indeed done. They may have to interview witnesses or draw inferences from related information. On the other hand, government's need for records must be weighed against the burden on operators to produce and maintain the records. By and large, PS-124 commenters and SIRRC industry members did not object to keeping records of leak tests. In fact, the SIRRC Summary Report states that keeping some type of leak test record is a common industry practice. It was the extent and volume of the records that SIRRC's industry members found objectionable.

In our view, NAPSRS's recommended leak test records would be too burdensome, because the safety significance of leak tests is less than that of pressure tests done to establish the MAOP of pipelines operating above 100 psig. At the same time, it seems that industry's voluntary practices may satisfy the need for records to demonstrate compliance with leak test requirements. Therefore, while we are not proposing to adopt NAPSRS's recommendation, we are proposing to amend § 192.517 to require that operators maintain a record of each test required by §§ 192.509, 192.511, and 192.513 for at least 5 years. This proposal should accommodate the industry's various voluntary recordkeeping practices, and allow time for government inspectors to view the records. The proposed rule would apply to leak tests done after the rule takes effect.

25. Section 192.553, Uprating: General Requirements; § 192.557 Uprating: Steel Pipelines to a Pressure That Will Produce a Hoop Stress Less Than 30% of SMYS: Plastic, Cast Iron, and Ductile Iron Pipelines. (SIRRC Summary Report, P. 41)

Recommendation. Clarify that § 192.557 does not allow MAOP to be increased without substantiation by pressure testing.

SIRRC. The committee did not reach a resolution on this recommendation. Industry members were concerned that NAPSRS's recommended changes to § 192.557 would unintentionally prohibit the uprating of some pipelines that could be uprated under the present rule. However, the committee did agree that in § 192.553(d) the reference to "this part" should be changed to "§§ 192.619 and 192.621" to specify the sections that limit MAOP.

Response. We decided not to propose to adopt NAPSRS's recommendation

because we feel the requirement to base any increase in MAOP on a test pressure is clear under § 192.553(d). This section limits any increase in MAOP to the maximum allowed for new pipelines, which, under § 192.619(a)(2)(ii), must be based on a pressure test. However, we are proposing to adopt SIRRC's suggested change to clarify § 192.553(d).

26. Section 192.607, Determination of Class Location and Confirmation of Maximum Allowable Operating Pressure. (SIRRC Summary Report, p. 43)

Recommendation. Remove expired compliance deadlines from § 192.607.

SIRRC. The committee agreed the recommendation was no longer needed.

Response. The Final Rule in PS-124 repealed § 192.607.

27. Section 192.614(b)(2), Damage Prevention Program. (SIRRC Summary Report, p. 44)

Recommendation. Require that operators notify the public and known excavators about excavation damage prevention programs at least once a year.

SIRRC. The committee agreed to defer the recommendation to RSPA's damage prevention improvement team. (The work of that team has been assumed by the Dig Safely division of the Common Ground Alliance, a nonprofit organization that promotes best practices in damage prevention.)

Response. The present rule requires operators to notify the public and known excavators "as often as needed" to make them aware of the operator's program. This open-ended frequency permits operators to vary the timing and number of notices to recipients according to the results of their programs. Presumably fewer notices would be needed in an area where the incidence of excavation damage is low or dropping. Conversely, more would be needed if the incidence is high or increasing. Although NAPSRS felt the rule should prescribe a minimum rate of notification, it did not explain why annual notification is appropriate in all situations. And we do not have data to support such an across-the-board rule change. Nevertheless, we think NAPSRS's concern is mitigated by the authority of RSPA and state agencies under § 192.603(c) to require operators to modify their damage prevention procedures on a case-by-case basis as needed for safety. Meanwhile, we are working with the Common Ground Alliance to help operators improve their public education programs. If the need for rulemaking on notification frequency becomes apparent as a result of that

effort, we will propose the necessary rule changes.

28. Section 192.615(a)(3)(i), Emergency Plans. (SIRRC Summary Report, p. 45)

Recommendation. Amend § 192.615(a)(3)(i) to require that operators' procedures for handling emergencies provide for prompt and effective response to reports of gas odor inside or near buildings.

SIRRC. The committee did not reach consensus on the recommended change to § 192.615(a)(3)(i), because many operators consider gas-odor reports to be potential, but not actual, emergencies. Instead, the committee agreed that operating and maintenance manuals under § 192.605(b) are a better place for procedures on responding to gas-odor reports.

Response. We agree that not all reports of gas odor indicate that gas has actually been detected. Some reports may merely indicate that someone smells what is thought to be gas but which upon investigation cannot be confirmed as gas. If operators had to treat all reports of gas odor as emergencies, their ability to respond to true emergencies might decline. Thus we are not proposing to adopt NAPSRS's recommendation.

Regardless of whether a gas odor report is an emergency, both PS-124 commenters and SIRRC recognized the need for prompt investigation of gas odor reports to determine if a hazardous situation exists. We believe that by and large operators respond promptly to gas odor reports and have procedures for doing so. Nevertheless, to insure that operators have adequate procedures for responding promptly to gas odor reports, we are proposing to adopt SIRRC's suggested alternative by establishing § 192.605(b)(11). Because some operators may prefer to apply their emergency procedures to all reports of gas odor, the proposed rule allows them to do so.

29. Section 192.625 (f), Odorization of Gas. (SIRRC Summary Report, p. 47)

Recommendation. Require that operators sample gas to assure proper odorant concentration at least six times a year with an instrument capable of determining the percentage of gas in air.

SIRRC. The committee did not agree on the frequency of sampling. Industry members wanted to maintain the flexibility of the current rule, which allows operators to determine frequency based on need. NAPSRS members wanted to add certainty to the rule by requiring a sampling frequency that is in keeping with common practice.

Nevertheless, the members did agree the rule should require use of an instrument, although they recognized that sampling for odorant concentration could not be done without an instrument. They also agreed the master meter exception should be relocated to minimize the potential for confusion over the acceptability of using “sniff” tests.

Response. The present rule requires operators to conduct periodic sampling to assure the proper concentration of odorant. However, operators of master meter systems (which exist mainly in mobile home parks and multifamily housing) do not have to conduct sampling if the operator verifies the system receives properly odorized gas and performs “sniff” tests to confirm the presence of odorant at the ends of the system.

NAPSR intended its recommendation to address two concerns. The first was that some operators, other than master meter operators, used “sniff” tests rather than instruments to determine odorant concentration. The second was that the required sampling frequency is vague. Regarding the first concern, both PS-124 commenters and SIRRC recognized that the present sampling requirement cannot be satisfied without using an appropriate test instrument. Indeed we believe use of an instrument is common industry practice, because a sniff test cannot accurately determine the concentration of odorant. Therefore, we are proposing to amend § 192.625(f) to state specifically that an instrument must be used to determine odorant concentration. In addition, we are not proposing to relocate the master meter exception, because we do not think its present location confuses the acceptable use of “sniff” tests.

As to NAPSR’s second concern, we are certainly mindful of the importance of clarity in regulations. Yet we are uneasy about proposing a minimum sampling frequency that is not backed by consensus or a safety justification that supports the frequency. At the same time, we are persuaded by PS-124 commenters and SIRRC’s industry members’ view that sampling frequency is more appropriately determined on the basis of system conditions. A system might need sampling more often than six times a year in problem locations but less often at locations where odorant concentration consistently meets requirements. Also, under § 192.605(b)(1), each operator’s operating and maintenance procedures must provide odorant sampling frequencies, and operators must be able to justify the frequencies. Finally, under § 192.603(c), government regulators are

authorized to challenge any sampling frequencies they consider deficient on the basis of safety data. They may also require operators to amend their procedures after considering any relevant information the operator provides. We believe this review and amendment process serves as a check on any possible misuse of sampling flexibility. Therefore, we are not proposing to establish a minimum sampling frequency.

30. Section 192.723(b)(2), Distribution Systems: Leak Surveys. (SIRRC Summary Report, p. 49)

Recommendation. Amend § 192.723(b)(2) to allow leeway in meeting the leakage survey intervals.

SIRRC. The committee members agreed that NAPSR’s recommendation was appropriate.

Response. In the proceeding called “Periodic Updates to Pipeline Safety Regulations (1999)” (56 FR 15290; Mar. 22, 2000), we proposed to amend § 192.723(b)(2) as NAPSR recommended.

31. Section 192.739(c), Pressure Limiting and Regulating Stations: Inspection and Testing; § 192.743(c), Pressure Limiting and Regulating Stations: Testing of Relief Devices. (SIRRC Summary Report, p. 50)

Recommendation. Clarify the meaning of “correct pressure” in § 192.739(c) and “insufficient capacity” in § 192.743(c) by cross-referencing § 192.201, which limits the overpressure of pipelines protected by pressure relieving and limiting stations.

SIRRC. The committee agreed that both sections should cross-reference § 192.201. However, the committee revised NAPSR’s recommended wording to clarify that the set point of overpressure protective devices may be above the downstream MAOP.

Response. We are proposing to change §§ 192.739(c) and 192.743(c) consistent with SIRRC’s suggestions. The proposed changes would require that relief devices at existing pressure limiting and regulating stations meet the same standards for operation and relieving capacity as newly installed relief devices. The PS-124 comments and SIRRC’s perspective indicate that industry practices are generally in accord with this approach to compliance with §§ 192.739(c) and 192.743(c). So we believe the proposed changes would clarify these regulations and not add significantly to the costs of compliance.

32. Section 192.743(a) and (b), Pressure Limiting and Regulating Stations: Testing of Relief Devices. (SIRRC Summary Report, p. 52)

Recommendation. In view of the disadvantages of testing relief devices in place (cost, noise, and potential safety hazards from escaping gas), change § 192.743 to allow operators to use calculations to determine if relief devices are of sufficient capacity without first having to determine that testing the devices in place is not feasible.

SIRRC. The committee members agreed to accept NAPSR’s recommendation.

Response. Under the present rule, operators may not use calculations to determine necessary relief capacity until they determine that testing existing relief devices in place is not feasible. In addition to SIRRC, most PS-124 commenters supported NAPSR’s recommendation. For the reasons NAPSR advanced, we also believe the recommended change is appropriate. Therefore, we are proposing to change §§ 192.743(a) and (b) to remove the present preference for testing relief devices in place.

33. Section 192.745, Valve Maintenance: Transmission Lines. (SIRRC Summary Report, p. 53)

Recommendation. For each transmission line valve inspected under § 192.745, require that operators take immediate remedial action on any valve found to be inoperable, inaccessible, improperly supported, subject to external loads or unusual stresses, or inadequately protected from unauthorized operation, tampering, or damage.

SIRRC. The committee did not reach a resolution on this recommendation. Industry members questioned the need for the recommended changes.

Response. Section 192.745 requires annual inspection of transmission line valves that might be needed during an emergency. Because § 192.745 requires each inspection to include partial operation of the valve, there is no question operators must maintain these valves in an operable condition.

Section 192.745 does not regulate how soon a valve must be corrected if it is found inoperable. NAPSR recommended immediate remedial action. Most PS-124 industry commenters preferred to act “as soon as practical,” so they would not have to disrupt other essential services. But NAPSR did not think this phrase reflected the urgency of the situation.

In the absence of a specified time limit for remedial action, operators may

take a reasonable time. Although a reasonable time may be satisfactory for some maintenance duties, we agree with NAPSAR that emergency valves found inoperable need priority attention.

Therefore, we are proposing to amend § 192.745 to require operators to take prompt remedial action if any valve is found inoperable. Requiring prompt action rather than immediate action should allow operators the latitude they sought in scheduling maintenance activities, yet assure a timely response.

Part 192 design and construction regulations already address most of NAPSAR's other objectives. For instance, § 192.179(b), a design rule, requires that onshore transmission line block valves be readily accessible, protected from tampering and damage, and adequately supported. In addition, § 192.317, a construction rule, requires protection of transmission lines from external loads and unusual stresses. Moreover, if for any reason an emergency valve becomes unsafe, such as by damage or loss of support, § 192.703(b) would require remedial action. While § 192.703 does not establish a time limit for remedial action, we think a reasonable time is sufficient for any deficiency that does not make the valve inoperable.

Therefore, we are not proposing to adopt NAPSAR's recommendation to shorten the allowable response time to deficiencies that do not make an emergency valve inoperable.

Part 192 does not regulate the protection of transmission line valves from unauthorized operation. However, operators commonly provide valve security. And unauthorized operation of valves has not been a significant problem on transmission lines. Also, operators of large systems can detect unauthorized operation of valves through monitoring of system pressures. Following the events of September 11, 2001, we began working with operators and other federal agencies to consider the need to improve the security of critical pipeline facilities. Given these circumstances, we are not now proposing to regulate the unauthorized operation of transmission line valves.

34. Section 192.747 Valve Maintenance: Distribution Systems. (SIRRC Summary Report, p. 54)

Recommendation. Change § 192.747, which requires annual inspection and servicing of each valve that may be needed for safe operation of a distribution system, to apply only to valves that operators designate for use in an emergency. Also, require partial operation of each emergency valve, and immediate remedial action if the valve is found to be inoperable, inaccessible,

improperly supported, subject to external loads or unusual stresses, or inadequately protected from unauthorized operation, tampering, or damage.

SIRRC. Although the committee did not reach consensus on this recommendation, it agreed that remediation could include designation of an alternate emergency valve. Industry members were particularly concerned that partial operation could cause some valves to close inadvertently, with potentially dangerous consequences, and could damage valves not designed for frequent operation.

Response. NAPSAR's rationale for limiting the present rule to designated emergency valves was to make clear which valves are to be inspected. However, we think § 192.605(b)(1), which requires operators to have procedures for complying with § 192.747, adequately addresses NAPSAR's concern. Operators' procedures should not only explain how to inspect and service valves, but also identify which valves are to be inspected and serviced. In addition, valves intended for safe operation of a distribution system may not be the same valves operators might designate for use in an emergency. So limiting the present rule to emergency valves for the sake of clarity could inadvertently narrow the rule.

Still we think that any valve that may be needed for safe operation of a distribution system should receive priority attention if it is found inoperable. Therefore, we are proposing to amend § 192.747 to require prompt remedial action if any such valve is found inoperable, unless the operator designates an alternate valve. For the reasons stated above in response to Recommendation No. 33, we are not proposing to adopt NAPSAR's recommendation to require immediate remedial action on deficient valves that remain operable. Further, because of the possibility of adverse consequences to the valve or others, we are not proposing to require partial operation of valves.

The accessibility of distribution system valves has been a safety problem in some situations. For instance, if a valve essential to stop the flow of gas in an emergency is found to be paved over, the resulting delay in operating the valve can worsen the emergency. We think § 192.605(b)(1) addresses this problem. This rule requires distribution operators to have and follow procedures to carry out the safety valve maintenance requirements of § 192.747. And these procedures should identify

which distribution system valves are subject to § 192.747. If an identified safety valve is paved over without notice between annual inspections, the operator should discover the problem no later than the next annual inspection. At that time the operator would have to either correct the problem in order to carry out the inspection or revise its procedures to designate an alternative safety valve.

35. Section 192.753, Caulked Bell and Spigot Joints. (SIRRC Summary Report, p. 57)

Recommendation. Correct the conflict between § 192.621(a)(3), which allows a pressure as high as 25 psig in cast iron pipe with unreinforced bell and spigot joints, and § 192.753(a), which requires cast-iron bell and spigot joints subject to pressures of 25 psig or more to be sealed.

SIRRC. The committee members agreed the conflict should be corrected.

Response. We are proposing to change § 192.753 to remove the conflict.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures

RSPA does not consider this proposed rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has not received a copy of this rulemaking to review. RSPA also does not consider this proposed rulemaking to be significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

We prepared a Draft Regulatory Evaluation of the proposed rules, and a copy is in the docket. This regulatory evaluation concludes that the proposed changes to existing rules may actually reduce operators' costs to comply with those rules because some proposals have compliance options. If you disagree with this conclusion, please provide information to the public docket described above.

Regulatory Flexibility Act

The proposed rules are consistent with customary practices in the gas pipeline industry. Therefore, based on the facts available about the anticipated impacts of this proposed rulemaking, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this proposed rulemaking would not have a significant impact on a substantial number of small entities. If you have any information that this conclusion about the impact on small

entities is not correct, please provide that information to the public docket described above.

Executive Order 13084

The proposed rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments." Because the proposed rules would not significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Paperwork Reduction Act

Proposed §§ 192.517(b) and 192.605(b)(11) contain minor additional information collection requirements. Operators would be required under § 192.517(b) to maintain for 5 years records of certain leak tests, and under § 192.605(b)(11) to have procedures for responding promptly to a report of gas odor inside or near a building. However, we believe most operators already maintain records of leak tests and have procedures for responding to reports of gas odor inside or near buildings. Also, we believe the burden of retaining these records is minimal. These records are largely computerized. Maintaining these records on a floppy disk or computer file represents very minimal costs. So, because the additional paperwork burdens of this proposed rule are likely to be minimal, we believe that submitting an analysis of the burdens to OMB under the Paperwork Reduction Act is unnecessary. If you disagree with this conclusion, please submit your comments to the public docket.

Unfunded Mandates Reform Act of 1995

This proposed rulemaking would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and would be the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

We have analyzed the proposed rules for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the proposed rules parallel present requirements or practices, we have preliminarily determined that the proposed rules would not significantly affect the quality of the human environment. An

environmental assessment document is available for review in the docket. A final determination on environmental impact will be made after the end of the comment period. If you disagree with our preliminary conclusion, please submit your comments to the docket as described above.

Impact on Business Processes and Computer Systems

We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to "Y2K" or related computer problems. The proposed rules would not mandate business process changes or require modifications to computer systems. Because the proposed rules would not affect the ability of organizations to respond to those problems, we are not proposing to delay the effectiveness of the requirements.

Executive Order 13132

The proposed rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). The proposed rules do not propose any regulation that: (1) Has substantial direct effects on the States, the relationship between the National government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

List of Subjects in 49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, RSPA proposes to amend 49 CFR part 192 as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. Amend § 192.3 by adding definitions of "customer meter" and "service regulator" and by revising the definition of "service line" as follows:

§ 192.3 Definitions.

* * * * *

"Customer meter" means the meter that measures the transfer of gas from an operator to a consumer.

* * * * *

"Service line" means a distribution line that transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter manifold. A service line terminates at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter.

"Service regulator" means the device on a service line which controls the pressure of gas delivered from a higher pressure to the pressure provided to the customer. A service regulator may serve one customer or multiple customers through a meter header or manifold.

* * * * *

§ 192.123 [Amended]

3. Remove the second sentence in § 192.123(b)(2)(i).

§ 192.197 [Amended]

4. In § 192.197(a), remove the term "under 60 p.s.i. (414 kPa) gage" and add the term "60 psi (414 kPa) gage, or less," in its place.

§ 192.285 [Amended]

5. In § 192.285(d), remove the term "his" and add the term "the operator's" in its place.

6. Revise § 192.311 to read as follows:

§ 192.311 Repair of plastic pipe.

Each imperfection or damage that would impair the serviceability of plastic pipe must be repaired or removed.

7. Revise § 192.321(e) to read as follows:

§ 192.321 Installation of plastic pipe.

* * * * *

(e) Plastic pipe that is not encased must have an electrically conducting wire or other means of locating the pipe while it is underground. Tracer wire may not be wrapped around the pipe and contact with the pipe must be minimized. Tracer wire or other metallic elements installed for pipe locating purposes must be resistant to corrosion damage, either by use of coated copper wire or by other means.

* * * * *

8. Revise the first sentence of § 192.353(a) to read as follows:

§ 192.353 Customer meters and regulators: Location.

(a) Each meter and service regulator, whether inside or outside of a building, must be installed in a readily accessible location and be protected from corrosion, vehicular, and other damage.

* * *

* * * * *

9. Add § 192.361(g) to read as follows:

§ 192.361 Service lines: Installation.

* * * * *

(g) *Locating underground service lines.* Each underground service line that is not encased must have a means of locating the pipe that complies with § 192.321(e).

§ 192.457 [Amended]

10. Amend § 192.457 as follows:

a. Remove the second sentence in paragraph (b)(3); and

b. Remove paragraph (c).

11. Revise § 192.465(e) to read as follows:

§ 192.465 External corrosion control: Monitoring.

* * * * *

(e) After the initial evaluation required by §§ 192.455(b) and (c) and 192.457(b), each operator must, not less than every 3 years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator must determine the areas of active corrosion by electrical survey. However, on distribution lines and where an electrical survey is impractical on transmission lines, areas of active corrosion may be determined by other means that include review and analysis of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment. In this section:

(1) *Active corrosion* means continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety or the environment.

(2) *Electrical survey* means a series of closely spaced pipe-to-soil readings over a pipeline that are subsequently analyzed to identify locations where a corrosive current is leaving the pipeline.

(3) *Pipeline environment* includes soil resistivity (high or low), soil moisture (wet or dry), soil contaminants that may promote corrosive activity, and other known conditions that could affect the probability of active corrosion.

12. Revise § 192.479 to read as follows:

§ 192.479 Atmospheric corrosion control: General.

(a) Each operator must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.

(b) Coating material must be suitable for the prevention of atmospheric corrosion.

(c) Except portions of pipelines in offshore splash zones or soil-to-air interfaces, the operator need not protect against atmospheric corrosion any pipeline for which the operator demonstrates by test, investigation, or experience appropriate to the environment of the pipeline that corrosion will—

(1) Only be a light surface oxide; or

(2) Not affect the safe operation of the pipeline before the next scheduled inspection.

13. Revise § 192.481 to read as follows:

§ 192.481 Atmospheric corrosion control: Monitoring.

(a) Each operator must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

(1) If the pipeline is located:	Then the frequency of inspection is:
(2) Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months
(3) Offshore	At least once each calendar year, but with intervals not exceeding 15 months.

(b) During inspections the operator must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

(c) If atmospheric corrosion is found during an inspection, the operator must provide protection against the corrosion as required by § 192.479.

14. Amend § 192.517 as follows:

a. Designate the introductory text as paragraph (a);

b. In newly designated paragraph (a), redesignate paragraphs (a), (b), (c), (d), (e), (f), and (g) as (a)(1), (2), (3), (4), (5), (6), and (7), respectively; and

c. Add paragraph (b) to read as follows:

§ 192.517 Records.

* * * * *

(b) Each operator must maintain a record of each test required by §§ 192.509, 192.511, and 192.513 for at least 5 years.

15. In the first sentence in § 192.553(d), remove the term “this part” and add the term “§§ 192.619 and 192.621” in its place.

16. Add § 192.605(b)(11) to read as follows:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(b) * * *

(11) Responding promptly to a report of gas odor inside or near a building, unless the operator’s emergency procedures under § 192.615(a)(3) specifically apply to these reports.

* * * * *

17. Revise the first sentence of § 192.625(f) introductory text to read as follows:

§ 192.625 Odorization of gas.

* * * * *

(f) To assure the proper concentration of odorant in accordance with this section, each operator must conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. * * *

* * * * *

18. Revise § 192.739(c) to read as follows:

§ 192.739 Pressure limiting and regulating stations: Inspection and testing.

* * * * *

(c) Set to control or relieve at the correct pressures consistent with the pressure limits of § 192.201(a); and

* * * * *

19. Revise § 192.743 to read as follows:

§ 192.743 Pressure limiting and regulating stations: Capacity of relief devices.

(a) Pressure relief devices at pressure limiting stations and pressure regulating stations must have sufficient capacity to protect the facilities to which they are connected consistent with the pressure limits of § 192.201(a). This capacity must be determined at intervals not exceeding 15 months, but at least once each calendar year, by testing the devices in place or by review and calculations.

(b) If review and calculations are used to determine if a device has sufficient capacity, the calculated capacity must be compared with the rated or experimentally determined relieving capacity of the device for the conditions under which it operates. After the initial calculations, subsequent calculations need not be made if the annual review documents that parameters have not changed so as to cause the rated or

experimentally determined relieving capacity to be insufficient.

(c) If a relief device is of insufficient capacity, a new or additional device must be installed to provide the capacity required by paragraph (a) of this section.

20. Amend § 192.745 as follows:

a. Designate the existing text as paragraph (a); and

b. Add paragraph (b) to read as follows:

§ 192.745 Valve maintenance: Transmission lines.

* * * * *

(b) Each operator must take prompt remedial action to correct any valve found inoperable.

21. Amend § 192.747 as follows:

a. Designate the existing text as paragraph (a); and

b. Add paragraph (b) to read as follows:

§ 192.747 Valve maintenance: Distribution systems.

* * * * *

(b) Each operator must take prompt remedial action to correct any valve found inoperable, unless the operator designates an alternate valve.

22. In § 192.753, revise the introductory text of paragraph (a) and revise paragraph (b) to read as follows:

§ 192.753 Caulked bell and spigot joints.

(a) Each cast iron caulked bell and spigot joint that is subject to pressures of more than 25 psi (172kPa) gage must be sealed with:

* * * * *

(b) Each cast iron caulked bell and spigot joint that is subject to pressures of 25 psi (172kPa) gage or less and is exposed for any reason must be sealed by a means other than caulking.

Issued in Washington, DC, on October 31, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02-28240 Filed 11-12-02; 8:45 am]

BILLING CODE 4910-60-P

Notices

Federal Register

Vol. 67, No. 219

Wednesday, November 13, 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

Office of the Secretary

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Office of Community Development's intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 25 Rural Empowerment Zones and Enterprise Communities (EZ/EC).

DATES: Comments on this notice must be received by January 13, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Norman P. Brown, Management Analyst, Office of Community Development, U.S. Department of Agriculture, STOP 3203, 1400 Independence Avenue, SW., Washington, DC 20250-3203, or by email: nbrown@ocdx.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Rural Empowerment Zones and Enterprise Communities (EZ/EC).

OMB Number: 0570-0027.

Expiration Date of Approval: March 31, 2003.

Type of Request: Extension for a currently approved information collection.

Abstract: USDA Rural Development's Office of Community Development administers the rural Empowerment Zones and Enterprise Communities (EZ/EC) program, an initiative designed to provide economically depressed rural areas and communities with real opportunities for growth and revitalization. Its mission: to create self-sustaining, long-term economic development in areas of pervasive

poverty, unemployment, and general distress, and to demonstrate how distressed communities can achieve self-sufficiency through innovative and comprehensive strategic plans developed and implemented by alliances among private, public, and nonprofit entities.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 21 hours per response.

Respondents: Rural Empowerment Zones, rural Enterprise Communities and Champion Communities.

Estimated Number of Respondents: 178.

Estimated Number of Responses Per Respondent: 2.

Estimated Number of Responses: 356.

Estimated Total Annual Burden on Respondents: 3,762.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692-0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Office of the Secretary, including whether the information will have practical utility; (b) the accuracy of the Office of the Secretary's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250-0742. 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: October 28, 2002.

Michael E. Neruda,

Deputy Under Secretary, Rural Development.

[FR Doc. 02-28718 Filed 11-12-02; 8:45 am]

BILLING CODE 3410-01-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 6, 2002.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the 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 burden including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal Plant and Health Inspection Service

Title: Brucellosis Program Cooperative Agreements—Title 9, CFR Parts 50, 51, 53, 54, 71, 76, and 78.

OMB Control Number: 0579-0047.

Summary of Collection: Brucellosis is a contagious animal disease that causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. It is mainly a disease of cattle, bison and swine. There is no economically feasible treatment for brucellosis in livestock. Veterinary Services, a division with USDA's Animal and Plant Health Inspection Service (APHIS), is responsible for administering regulations intended to prevent the dissemination of animal diseases, such as brucellosis, within the United States. These regulations are found in part 78 of title 9, Code of Federal Regulations. The continued presence of brucellosis in a herd seriously threatens the health of other animals. APHIS will collect information using various forms.

Need and Use of the Information: APHIS will use the information collected from the forms to continue to search for other infected herds, maintain identification of livestock, monitor deficiencies in identification of animals for movement, and monitor program deficiencies in suspicious and infected herds. This information will be used to determine brucellosis area status and aids herd owners by speeding up the detection and elimination of serious disease conditions in their herds. Without the date, APHIS' Brucellosis Eradication Program would be severely crippled.

Description of Respondents: Farms; State, Local or Tribal Government.

Number of Respondents: 7,382.

Frequency of Responses:

Recordkeeping; reporting: On occasion.

Total Burden Hours: 17,681.

Animal and Plant Health Inspection Service

Title: Importation of Clementines from Spain.

OMB Control Number: 0579-NEW.

Summary of Collection: The United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS) is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed within the United States, eradicating plant pests when eradication is feasible. The Plant Protection Act authorizes the Department to carry this mission. Until

recently, clementines from Spain have been imported under permit, and provided that they were cold treated for the Mediterranean fruit fly in accordance with the treatment listed in the Plant Protection and Quarantine Treatment Manual. Clementines imported from Spain were not required to meet any additional requirements in order to be imported into the United States, but were subject to inspection at the port of entry. In November 2001, importation of clementines from Spain was suspended due to live Medfly larvae being intercepted. APHIS' final rule will amend the fruits and vegetables regulations to allow the importation of clementines from Spain to resume if the clementines are cold treated en route to the United States under certain conditions, and provided that certain other pretreatment and post-treatment requirements are met.

Need and Use of the Information: APHIS will collect information to ensure that the cold treatment was successfully completed and also to ensure that no Mediterranean fruit fly are found in any of the shipment of clementines from Spain. Failure to collect this information would cripple APHIS' abilities to ensure that clementines from Spain are not carrying fruit flies.

Description of Respondents: Business or other for-profit; State, local or tribal government.

Number of Respondents: 37.

Frequency of Responses:

Recordkeeping; reporting: On occasion.

Total Burden Hours: 113,200.

Animal and Plant Health Inspection Service

Title: Safeguarding System Definition Project.

OMB Control Number: 0579-NEW.

Summary of Collection: "Protecting American Agriculture" is the basic charge of the Animal and Plant Health Inspection Service (APHIS). APHIS provides leadership in ensuring the health and care of animals and plants. The Plant Protection Quarantine (PPQ) is a program within APHIS, charged with creating and maintaining a system of safeguards against accidental introduction of foreign plant and animal pests and diseases. Title IV, Agriculture Risk Protection Act (PPA) of 2000, states that APHIS needs to educate its various audiences about different kinds of invasive pests and diseases and the role APHIS plays in dealing with them. The cooperation and good will of the American people is a key element in the fight to safeguard the United States against exotic plant and animal pests and diseases while providing for a

healthy and abundant food supply in the global marketplace. The Safeguarding Definition Project is intended to help APHIS better understand what the public knows about their activities, what they would like to know, and how to best communicate that information. APHIS will collect information using telephone or in-person interviews, surveys, and external focus groups.

Need and Use of the Information: APHIS will collect information to guide contractors in developing slogans and messages for the program as well as obtaining ideas for implementing the market plan. The information will also help determine key words and phrases that will resonate with the audiences and what benefits APHIS/PPQ can communicate to key audiences the ultimate objective of protecting American agriculture in the United States from unwanted pests and diseases.

Description of Respondents: Business or other for-profit; Individuals or households.

Number of Respondents: 168.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 198.

Agricultural Marketing Service

Title: National Research and Promotion Board, Council, and Committee Membership Background Information.

OMB Control Number: 0581-NEW.

Summary of Collection: The Agricultural Marketing Service (AMS) has the responsibility for implementing and overseeing research and promotion programs for a variety of commodities. Each commodity is established under specific freestanding legislation. These programs carry out projects relating to research, consumer information, advertising, sales promotion, producer information, market development and product research to assist, improve or promote the marketing distribution, and utilization of their respective commodities.

Need and Use of the Information: AMS will use form AMS-755, Research and Promotion Background Information, to determine qualifications, suitability, and availability for service on national research and promotion boards, councils, and committees. Also, the form will be used to perform background checks on the nominees, to confirm that the nominees are not delinquent with any loans and to verify that they do not have a negative history with USDA.

Description of Respondents: Individuals or households.

Number of Respondents: 672.
Frequency of Responses: Reporting: Annually.
Total Burden Hours: 336.

Food and Nutrition Service

Title: Operating Guidelines, Forms and Waivers.

OMB Control Number: 0584-0083.

Summary of Collection: Section 11(d) of the Food Stamp Act of 1977, as amended, provides that the State agency of each participating State shall submit to the Secretary for approval a plan of operation specifying the manner in which the Food Stamp Program will be conducted within the State in every political subdivision. Section 11(e) of the Act provides that the State plan of operation shall provide for State agency verification of household eligibility prior to certification, completion of certification within 30 days of filing of the application, fair hearing, and submission of reports as required by the Secretary. The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement, and the Program Activity Statement (272.2(a)(2)). Under part 272.2(c), the State agency shall submit to the Food and Nutrition Service (FNS) for approval a Budget Projection Statement (which projects total Federal administrative costs for the upcoming fiscal year) and a Program Activity Statement (which provides program activity data for the preceding fiscal year). FNS will collect information using Forms FNS 366A and FNS 366B.

Need and Use of the Information: FNS will collect information to estimate funding needs and also provide data on the number of applications processed, number of fair hearings, and fraud control activity. FNS uses the data to monitor State agency activity levels and performance. If the information is not collected it would disrupt budget planning and delay appropriation distributions.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; reporting: On occasion; quarterly.

Total Burden Hours: 2,932.

Food and Nutrition Service

Title: Interactive Healthy Eating Index Questionnaire

OMB Control Number: 0584-NEW.

Summary of Collection: The Center for Nutrition Policy and Promotion (CNPP) of the U.S. Department of Agriculture (USDA) wants to improve the quality, clarity and usability of the Interactive Healthy Eating Index (IHEI).

The IHEI is an Internet based diet self-assessment tool. The IHEI translates scientifically based guidance into practical information and promotes nutrition education by increasing awareness of the quality of a person's diet. Since the release of the IHEI in April 2000, CNPP has not collected official user feedback on the IHEI program and its usability. To ensure appropriate user feedback, CNPP has designed the IHEI questionnaire to collect information related to the key components and functions of the IHEI that are important to its overall quality, clarity, and usability.

Need and Use of the Information: The proposed questionnaire will collect information on the usability, clarity, and quality of the IHEI website. The questionnaire will also obtain feedback on user interest and need for addition of a personalized meal plan or suggested list of foods designed to improve a person's diet quality.

Description of Respondents:

Individuals or households.

Number of Respondents: 30,000.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 5,000.

Office of the Secretary, White House Liaison

Title: Advisory Committee and Research and Promotion Board Membership Background Information.

OMB Control Number: 0505-0001.

Summary of Collection: Section 1804 of the Food and Agriculture Act of 1977 (7 U.S.C. 2281, *et seq.*) requires the Department to provide information concerning advisory committee members' principal place of residence, persons or companies by whom employed, and other major sources of income. Similar information will be required of research and promotion boards/committees in addition the supplemental commodity specific questions. The Secretary appoints board members under each program. Some of the information contained on Form AD-755 is used by the Department to conduct background clearances of prospective board members required by departmental regulations. All committee members who are appointed by the Secretary require this clearance. The Office of the Secretary, White House Liaison will collect information using form AD-755, Advisory Committee and Research and Promotion Board Membership Background Information.

Need and Use of the Information: The Office of the Secretary, White House Liaison will collect information on the background of the nominees to make sure there are no delinquent loans to the

United States Department of Agriculture (USDA) as well as making sure they have no previous record that could be a negative reflection to USDA. The information obtained from the form is also used in the compilation of an annual report to Congress. Failure of the Department to provide this information would require the Secretary to terminate the pertinent committee or board.

Description of Respondents:

Individuals or households.

Number of Respondents: 1644.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 823.

Rural Housing Service

Title: 7 CFR 1822-G, Rural Housing Loans, Policies, Procedures and Authorizations.

OMB Control Number: 0575-0071.

Summary of Collection: Section 523 and 524 of the Housing Act of 1949 authorizes loans for acquiring and developing housing sites for low and moderate-income housing. Information is necessary to protect the public from projects being built in areas of low need by applicants that are unable to administer the program properly.

Need and Use of the Information: Rural Housing Service (RHS) will collect the information from participating organizations to verify and ensure program eligibility requirements and the appropriate use of loans. If the information is not collected, RHS would be unable to determine if the organization qualifies for loan assistance.

Description of Respondents: Not-for-profit institutions; State, Local and Tribal Government.

Number of Respondents: 6.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 36.

Agricultural Research Service

Title: Web Order Forms for Research Data, Materials, Models, and Publications, Speaker Bureau and Conference, Event, and Study Registration Services.

OMB Control Number: 0518-NEW.

Summary of Collection: OMB Circular 130 Management of Federal Information Resources, establishes that "agencies will use electronic media and formats* * *in order to make government information more easily accessible and useful to the public"* * * The Government Paperwork Elimination Act (GPEA), 44 USC 3504, Title XVII, requires agencies, by October 2003, to provide the option of electronic submission of information to the public. In order to provide

information and services related to its program responsibilities defined at 7 CFR 2.65, the Agricultural Research Service (ARS) needs to obtain certain basic information from the public, for example, research item or event participation requested, and name and contact information for requestor or participant. To comply with the requirements of GPEA, ARS needs to provide web forms so that customers may contact them electronically to request services such as speakers for eligible organizations; research data, materials, and models; publication; speakers; or conference, event, and study registrations.

Need and Use of the Information: ARS will use the information to respond to requests for specific services. The information will be collected electronically, by telephone, or by mail. If this collection is not conducted, ARS will be hindered from advancing its compliance with GPEA.

Description of Respondents: Individuals or households.

Number of Respondents: 11,450.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 572.

National Agricultural Statistics Service

Title: Stock Report.

OMB Control Number: 0535-0007.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production. As part of this function, estimates are made for stocks of grain and oilseeds, potatoes, peanuts, hops, and rice. Grain and oilseed stocks in all positions are estimated quarterly. Grain stocks estimates are one of the most important NASS estimates, which are watched closely by growers and industry groups. General authority for data collection is granted under U.S. Code title 7, section 2204. The Hop Growers of America provides the data collection for much of the production information because of sensitivity issues an impartial third party, NASS, collects stocks and price information.

Need and Use of the Information: NASS collects information to administer farm program legislation and make decisions relative to the export-import programs. Estimates of stocks provide essential statistics on supplies and contribute to orderly marketing. Farmers and agribusiness firms use these estimates in their production and marketing decisions. Collecting this information less frequently would eliminate data needed by government,

industry and farmers to keep abreast of changes at the State and national level.

Description of Respondents: Business or other for profit; Farms.

Number of Respondents: 12,876.

Frequency of Responses: Reporting: Monthly; quarterly; Semi-annually; Annually.

Total Burden Hours: 14,580.

Rural Utilities Service

Title: Advance of Loan Funds and Budgetary Control and Other Related Burdens.

OMB Control Number: 0572-0015.

Summary of Collection: The Rural Utilities Service (RUS) is authorized by the Rural Electrification Act (RE Act) of 1936, as amended, to make loans in several States and territories of the United States for rural electrification and for the purpose of furnishing and improving electric and telephone service in rural areas and to assist electric borrowers to implement demand-side management, energy conservation programs, and on-grid and off-grid renewable energy systems." Borrowers will provide the agency with information that supports the use of the funds as well as identify the type of projects for which they will use the funds.

Need and Use of the Information: RUS electric borrowers will submit RUS form 595, Financial Requirement & Expenditure Statement, to request an advance of loan funds. The information collected will ensure that loans funds are expended and advanced for RUS approved budget process and amounts. Failure to collect proper information could result in improper determinations of eligibility or improper use of funds.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 700.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 14,820.

Agricultural Marketing Service

Title: AMS Research and Promotion Customer Service Survey.

OMB Control Number: 0581-NEW.

Summary of Collection: The Agricultural Marketing Service (AMS) has the responsibility for the national commodity research and promotion boards. These boards are responsible for carrying out coordinated programs of research, producer and consumer education, and promotion to improve, maintain, and develop markets for various commodities. AMS has developed a survey to determine how well they have met their responsibilities and accomplished its mission.

Need and Use of the Information: AMS will use the information gathered to improve customer service with the boards and to provide them with an accurate evaluation of the boards.

Description of Respondents: Not-for-profit institutions; Farms.

Number of Respondents: 672.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 336.

Sondra A. Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 02-28740 Filed 11-12-02; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

Establishment of Stumpy Point Purchase Unit, Phillips and Lee Counties, AK

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: On September 24, 2002, the Under Secretary for Natural Resources and Environment, Department of Agriculture, created the 1,510-acre Stumpy Point Purchase Unit in Phillips and Lee Counties, Arkansas. A copy of the establishment document, which includes the legal description of the lands within the purchase unit, appears at the end of this notice.

DATES: Establishment of this purchase unit was effective September 24, 2002.

ADDRESSES: A copy of the map depicting the lands within the boundary extension is on file and available for public inspection in the Office of the Director, Lands Staff, 4th Floor—Sidney R. Yates Federal Building, Forest Service, USDA, 201 14th Street, SW., Washington, DC 20250, between the hours of 8:30 a.m. and 4:30 p.m. on business days. Those wishing to inspect the maps are encouraged to call ahead to (202) 205-1248 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jack Craven, Lands Staff, Forest Service, (202) 205-1248.

SUPPLEMENTARY INFORMATION: Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94-588 (90 Stat. 2949), the Stumpy Point Purchase Unit was created in Phillips and Lee Counties, Arkansas.

Dated: October 24, 2002.

Gloria Manning,

Associate Deputy Chief, National Forest System.

Establishment of the Stumpy Point Purchase Unit

Phillips and Lee County, Arkansas

The following described lands lying adjacent to the Ozark-St. Francis National Forest are determined to be suitable for the protection of the watersheds of navigable streams and for other purposes in accordance with Section 6 of the Weeks Act of 1911 (16 U.S.C. 515). Therefore, in furtherance of the authority of the Secretary of Agriculture pursuant to the Weeks Act of 1911, as amended, including Section 17 of the National Forest Management Act of 1976 (Pub. L. 94-588; 90 Stat. 2961), these lands are hereby designated and established as the Stumpy Point Purchase Unit:

Property Description

Phillips County, Arkansas

All of the Northeast Quarter (NE ¼) of Section 1 lying North and East of the St. Francis River, less the levee right-of-way, and accretions thereto, in Township 1 South, Range 4 East.

All of Section 6 lying North and East of the St. Francis River, less the levee right-of-way, and accretions thereto; all of Section 4 and accretions thereto; and all of Section 5 and accretions thereto, all in Township 1 South, Range 5 East.

All of Section 7 lying North of the St. Francis River and accretions thereto; and all of Section 8 lying North of the St. Francis River and accretions thereto, all in Township 1 South, Range 5 East.

Lee County, Arkansas

The South half (S ½) of the Southeast Quarter (SE ¼) in Section 32, Township 1 North, Range 5 East; and the South half (S ½) of the Southwest Quarter (SW ¼) and all accretions thereto in Section 33, Township 1 North, Range 5 East.

Containing 1,510 acres, more or less.

Executed in Washington, DC, this 24th day of September, 2002.

David P. Tenney for:

Mark Rey,

Under Secretary, Natural Resources and Environment.

[FR Doc. 02-28757 Filed 11-12-02; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1253]

Approval of Request for Manufacturing Authority Within Foreign-Trade Zone 126; Reno, NV (Personal Computers)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u),

the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Economic Development Authority of Western Nevada, grantee of FTZ 126, has requested authority under 15 CFR 400.32(b)(1) of the Board's regulations on behalf of Dell Computer to manufacture personal computers under zone procedures within Site 5 of FTZ 126 (filed 3-14-2002, FTZ Docket 17-2002);

Whereas, notice inviting public comment was given in **Federal Register** (67 FR 13125, 3/21/2002) and the application has been processed pursuant to the FTZ Act and the Board's regulations;

Whereas, pursuant to 15 CFR 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the activity is the same, in terms of products involved, as activity recently approved by the Board and similar in circumstances (15 CFR 400.32(b)(1)(i)); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of 15 CFR 400.31, and the Executive Secretary has recommended approval;

Now, therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to 15 CFR 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including 15 CFR 400.28.

Signed at Washington, DC, this 4th day of November 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02-28815 Filed 11-12-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 39-2002, 40-2002, 41-2002, 42-2002, 43-2002, 44-2002, 45-2002, 46-2002, 47-2002, and 48-2002]

Flint Ink North America Corporation—Applications For Foreign-Trade Subzone Status; Extension of Comment Period

The comment periods for the cases referenced above (67 FR 64088-64096, 10/17/2002) are being extended to February 14, 2003, to allow interested

parties additional time in which to comment on the proposals. These ten related cases involve pending subzone applications from the following Foreign-Trade Zones:

Foreign-Trade Zone 143—Sacramento, California
 Foreign-Trade Zone 170—Indianapolis, Indiana
 Foreign-Trade Zone 182—Fort Wayne, Indiana
 Foreign-Trade Zone 29—Louisville, Kentucky
 Foreign-Trade Zone 47—Boone County, Kentucky
 Foreign-Trade Zone 189—Kent-Ottawa-Muskegon Counties, Michigan
 Foreign-Trade Zone 46—Cincinnati, Ohio
 Foreign-Trade Zone 105—Providence, Rhode Island
 Foreign-Trade Zone 21—Charleston, South Carolina
 Foreign-Trade Zone 185—Culpeper, Virginia

Comments in writing are invited during this period. Submissions should include 3 copies. Material submitted will be available at: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005.

Dated: November 5, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02-28816 Filed 11-12-02; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-816]

Notice of Rescission of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products from Korea

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

ACTION: Notice of rescission of the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea.

SUMMARY: On September 25, 2002, the Department of Commerce ("Department") published a notice of initiation of an antidumping duty administrative review on certain corrosion-resistant carbon steel flat products from Korea (67 FR 60210). This review covers three manufacturers/exporters of the subject merchandise. The period of review ("POR") is August

1, 2001 through July 31, 2002. This review has now been rescinded as a result of a timely withdrawal of the request for administrative review by the interested parties.

EFFECTIVE DATE: November 13, 2002.

FOR FURTHER INFORMATION CONTACT:

Marlene Hewitt or James Doyle, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, telephone 202-482-1385 (Hewitt) or 202-482-0159 (Doyle), fax 202-482-1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2002).

Background

On August 6, 2002, the Department published a notice of opportunity to request an administrative review of this order for the period August 1, 2001 through July 31, 2002. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 50856 (August 6, 2002). Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation, petitioners in the original investigation, producers of the domestic like product, and therefore interested parties, timely requested that the Department conduct an administrative review of sales of Pohang Iron & Steel Co., Ltd. ("POSCO"), Dongbu Steel Co., Ltd. ("Dongbu") and Union Steel Manufacturing Co., Ltd. ("Union") of subject merchandise to the United States. On September 25, 2002, in accordance with section 751(a) of the Act, the Department published in the Federal Register a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 60210 (September 25, 2002).

Rescission of Review

Petitioners withdrew their request for review on September 30, 2002. The Department's regulations provide that the Secretary will rescind an administrative review "if a party that requested a review withdraws the

request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.213(d)(1). Petitioners withdrew their review request within the 90-day time limit. There were no other requests for administrative review from respondents or other interested parties. Therefore, in accordance with section 351.213(d)(1) of the Department's regulations, we are rescinding this administrative review. *See* Memorandum to the File from Marlene Hewitt, Enforcement Group III: Recission of Ninth Review (October 17, 2002). The Department will issue appropriate assessment instructions to the U.S. Customs Service.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751(a)(1) of the Act, and section 351.213(d) of the Department's regulations.

Dated: November 1, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02-28814 Filed 11-12-02; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-809]

Cut-to-length Carbon Steel Plate from Mexico; Notice of Extension of Time Limit for Final Results in Antidumping Duty Administrative Review

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

EFFECTIVE DATE: November 13, 2002.

SUMMARY: The Department of Commerce is extending the time limit for completion of the final results of the administrative review of the antidumping duty order on cut-to-length carbon steel plate from Mexico. The period of review is August 1, 2000, through July 31, 2001.

FOR FURTHER INFORMATION CONTACT:

Thomas Killiam or Michael Heaney at (202)482-5222 or (202) 482-4475,

respectively, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

On September 13, 2002, the Department published preliminary results of the administrative review of the antidumping duty order on cut-to-length carbon steel plate from Mexico (67 FR 58015). The period of review is August 1, 2000, through July 31, 2001. The review covers one producer/exporter of the subject merchandise to the United States, Altos Hornos de Mexico, S.A. de C.V.

Pursuant to section 751(a)(3)(A) of the Tariff Act, the Department shall make a final determination within 120 days after the date on which the preliminary determination is published.

The Tariff Act further provides, however, that the Department may extend the 120-day period to 180 days if it determines it is not practicable to complete the review within the foregoing time period. This review involves a number of complicated sales and cost issues. As a result, we need additional time for our analysis. Because it is not practicable to complete this administrative review within the time limit mandated by section 751(a)(3)(A) of the Tariff Act, the Department is extending the time limit for completion of the final results. Consequently, we have extended the deadline until March 12, 2002.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act (19 USC 1675(a)(3)(A)(2000)) and 19 CFR 351.213(h)(2).

Dated: November 1, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration Group III.

[FR Doc. 02-28813 Filed 11-12-02; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-533-808]

Stainless Steel Wire Rod from India: Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limits of the preliminary results of the antidumping duty administrative review of stainless steel wire rod ("SSWR") from India. This review covers the period December 1, 2000 through November 30, 2001.

EFFECTIVE DATE: November 13, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-1102.

SUPPLEMENTARY INFORMATION:**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001).

Background

On January 29, 2002, we published a notice of initiation of a review of SSWR from India covering the period December 1, 2000 through November 30, 2001. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, January 22, 2002 (67 FR 4236). On July 9, 2002, we published a notice of extension of the preliminary results of administrative review from September 2, 2002, to November 1, 2002. See *Stainless Steel Wire Rod from India: Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review*, July 9, 2002 (67 FR 45481) ("Preliminary Extension Notice"). Additionally, on

September 17, 2002, we published a notice of extension of the preliminary results of administrative review from November 1, 2002, to December 1, 2002. See *Stainless Steel Wire Rod from India: Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review*, September 17, 2002 (67 FR 58585).

Extension Of Time Limit Of Preliminary Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 245-day period to issue its preliminary results by 120 days. Because the Department has already extended these preliminary results only 90 days, we are allowed to further extend the preliminary results an additional 30 days. Completion of the preliminary results of this review within the 305-day period is not practicable for the following reasons, which were also cited in the *Preliminary Extension Notice*:

- The review involves four companies, a large number of transactions and complex adjustments.

- All companies include sales and cost investigations which require the Department to gather and analyze a significant amount of information pertaining to each company's sales practices, manufacturing costs and corporate relationships.

- Additionally, responses from three of the four companies required the Department to issue multiple supplemental questionnaires which further delayed the planned verification schedules.

- The planned verification for one of the companies was delayed due to the Department having to issue additional supplemental questionnaires.

Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 30 days until December 31, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: November 11, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02-28818 Filed 11-12-02; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration****University of Vermont; 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 AM and 5 PM in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, DC.

Docket Number: 02-033. *Applicant:* University of Vermont, Burlington, VT 05405. *Instrument:* High Speed CCD Camera, Model CPL MS1000. *Manufacturer:* Canadian Photonic Labs, Canada. *Intended Use:* See notice at 67 FR 52944, August 14, 2002.

Comments: None received. *Decision:* Application denied. Instruments or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, are being manufactured in the United States. *Reasons:* Pursuant to 15 CFR 301.5(d)(1)(iii) duty-free entry is predicated upon a finding by the Director with respect to "* * * whether an instrument or apparatus of equivalent scientific value to such article, for the purposes for which the article is intended to be used, is being manufactured in the United States." Furthermore, 15 CFR 301.5(d)(1)(i) stipulates that "The determination of scientific equivalency shall be based on a comparison of the pertinent specifications of the foreign instrument with similar pertinent specifications of comparable domestic instruments." As defined by 15 CFR 301.2(s):

Pertinent specifications are those specifications necessary for the accomplishment of the specific scientific research or science-related educational purposes described by the applicant. Specifications of features (even if guaranteed) which afford greater convenience, satisfy personal preferences, accommodate institutional commitments or limitations, or assure lower costs of acquisition, installation, operation, servicing or maintenance are not pertinent.

The applicant states that it conducted a thorough search for potential vendors of high-speed CCD imaging systems and contacted relevant manufacturers. The applicant claims that "It was during this phase that it was realized that many of the products on the market—domestic or otherwise—were (1) unnecessarily

advanced and (2) prohibitively expensive for our needs." The applicant then claims, with respect to the foreign article, that "* * * the other products were unacceptable for the reasons (1) and/or (2)." The applicant also states that "The domestic products encountered during the searching were unnecessarily advanced; they were "overkill" for the intended types of applications planned."

The applicant cites only one pertinent specification respecting its requirements; namely a "high speed" CCD camera, pointing out that "Cost rises dramatically with the speed, and the domestic instruments encountered during product searching were designed for frame speeds that were unnecessarily high for the applications being planned. Consequently their costs were prohibitive." Notwithstanding design considerations, it is common industry practice to make frame and shutter speeds adjustable, as the foreign manufacturer does, so that most domestic cameras should be operable at slower rates if required. The applicant fails to specify any rate or advance any argument to the contrary.

The regulations explicitly disallow matters of cost, convenience or institutional limitations as pertinent considerations in determining eligibility for duty exemption. Furthermore, a domestic instrument whose performance specifications are superior to those of the foreign instrument is considered "scientifically equivalent." Pursuant to CFR 15 301.5 (d)(1)(i) the necessary condition for duty exemption is that "* * * the Director finds that the foreign instrument possesses one or more pertinent specifications not possessed by the domestic instrument * * *". The application has failed to cite any such specification.

Furthermore, 15 CFR 301.5(e)(7) provides, in part, as follows:

Information provided in a resubmission that * * * contradicts or conflicts with information provided in a prior submission, or is not a reasonable extension of the information contained in the prior submission, shall not be considered in making the decision on an application that has been resubmitted. Accordingly, an applicant may elect to reinforce an original submission by elaborating in the resubmission on the description of the purposes contained in a prior submission and may supply additional examples, documentation and/or other clarifying detail, but the applicant shall not introduce new purposes or other material changes in the nature of the original application. (Emphasis supplied.)

Consequently, in view of the applicant's own determination, cited above, that equivalent domestic instruments were "prohibitively expensive" and by its failure to specify a pertinent feature possessed by the foreign and not by domestic instruments, we conclude that a resubmission cannot establish, without introducing conflicting information or impermissible new purposes, that a scientifically equivalent domestic instrument is not available. Therefore, the application is denied.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02-28817 Filed 11-12-02; 8:45 am]

BILLING CODE 3510-DS-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

November 6, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.gov>. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178,

published on December 18, 2001). Also see 66 FR 59409, published on November 28, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 21, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on November 14, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit ¹
334	257,322 dozen.
335	353,041 dozen.
336/636	740,510 dozen.
363	45,979,859 numbers.
369-S ²	2,883,230 kilograms.
645/646	651,142 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 2001.

² Category 369-S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02-28767 Filed 11-12-02; 8:45 am]

BILLING CODE 3510-DR-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

November 6, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.gov>. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63031, published on December 4, 2001.

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on November 14, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit ¹
Levels in Group I	
335	245,356 dozen.
635	486,117 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc.02-28766 Filed 11-12-02; 8:45 am]

BILLING CODE 3510-DR-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Ukraine

November 5, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of customs adjusting limits.

EFFECTIVE DATE: November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.gov>. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 435 is being increased for swing, reducing the limit for Category 448 to account for the swing being applied to Category 435.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also

see 66 FR 63225, published on December 5, 2001.

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 5, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in Ukraine and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on November 15, 2002, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Ukraine:

Category	Adjusted twelve-month limit ¹
435	113,131 dozen.
448	62,734 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 02-28768 Filed 11-12-02; 8:45 am]

BILLING CODE 3510-DR-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of the Temporary Amendment to the Requirements for Participating in the Special Access Program and the Outward Processing Program

November 5, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending amendments of requirements for participation in the Special Access Program for a temporary period.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

To qualify for treatment under the Special Access Program and Outward Processing Program, an apparel product must be assembled in an appropriate country from fabric formed and cut in the United States, including linings and pocketing, except that findings and trimmings of non-U.S. origin may be incorporated into the assembled product provided they do not exceed 25 percent of the cost of the components of the assembled product.

CITA currently allows certain linings to be considered findings and trimmings provided they are cut in the United States, exempting them from the requirement that such fabrics be formed in the United States. (63 FR 70112, as amended by 64 FR 149). A notice published in the Federal Register on September 11, 2002 requested public comments on CITA's intention to extend the current exemption period through December 31, 2004 (see 67 FR 57580).

After a review of the comments received, CITA has determined that it will extend the exemption period through December 31, 2004, effective January 1, 2003. This exemption applies to women's and girls' and men's and boys' chest type plate, "hymo" piece or "sleeve header" of woven or weft-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of tailored suit jackets and suit-type jackets in Categories 433, 435, 443, 444, 633, 635, 643 and 644, which are entered under the Special Access Program and Outward Processing Program.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 66 FR 65178, published on December 18, 2001).

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 5, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC
20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on December 14, 1998, December 24, 1998, December 9, 1999, and December 21, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. Those directives concern the foreign origin exception for findings and trimmings in Categories 433, 435, 443, 444, 633, 635, 643 and 644 under the Special Access Program which was amended and extended through December 31, 2002 for women's and girls' "hymo" type interlinings and for men's and boys' "hymo" type interlinings.

Effective on January 1, 2003, by date of export, you are directed to extend through December 31, 2004, the amendment to treat non-U.S. formed, U.S.-cut interlinings for chest type plate, "hymo" piece or "sleeve header" of woven or weft-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of tailored suit jackets and suit-type jackets in Categories 433, 443, 633 and 643 as qualifying for findings and trimmings, including elastic strips less than one inch in width, created under the Special Access Program effective September 1, 1986 (see 51 FR 21208). In the aggregate, such interlinings, findings and trimmings must not exceed 25 percent of the cost of the components of the assembled article. Non-U.S. formed, U.S.-cut interlinings may be used in imports of women's' and girls' and men's and boys' suit jackets and suit-type jackets entered under the Special Access Program (9802.00.8015) provided they are cut in the United States of a type of construction described above.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02-28765 Filed 11-12-02; 8:45 am]

BILLING CODE 3510-DR-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty and Quota Free Imports of Apparel Articles Assembled in Beneficiary ATPDEA Countries from Regional Country Fabric

November 6, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the First 12-Month Cap on Duty and Quota Free Benefits

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 3103 of the Trade Act of 2002; Presidential Proclamation 7616 of October 31, 2002 (67 FR 67283).

Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty-and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. Section 204(b)(3)(B)(iii) of the amended ATPA provides duty and quota-free treatment for certain apparel articles assembled in ATPDEA beneficiary countries from regional fabric and components. More specifically, this provision applies to apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 and 5603 of the Harmonized Tariff Schedule (HTS) and are formed in one or more ATPDEA beneficiary countries). Such apparel articles may also contain certain other eligible fabrics, fabric components, or components knit-to-shape.

For the one-year period, beginning on October 1, 2002, and extending through September 30, 2003, preferential tariff treatment is limited under the regional fabric provision to imports of qualifying apparel articles in an amount not to exceed 2.0 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. For the purpose of this notice, the 12-month period for which data are available is the 12-month period that ended July 31, 2002. In Presidential Proclamation 7616 (published in the Federal Register on November 5, 2002, 67 FR 67283), the President directs CITA to publish in the Federal Register the aggregate quantity of imports allowed during each 12-month period.

For the one-year period, beginning on October 1, 2002, and extending through September 30, 2003, the aggregate quantity of imports eligible for preferential treatment under the regional fabric provision is 347,010,859 square meter equivalents. This quantity will be recalculated for each subsequent year, under Section 204(b)(3)(B)(iii). Apparel articles entered in excess of this quantity will be subject to the otherwise applicable tariffs.

This quantity is calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02-28764 Filed 11-12-02; 8:45 am]

BILLING CODE 3510-DR-S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. 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 burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 13, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Force Management Policy/Military Personnel Policy/Accession Policy), Attn: MAJ Tony Kanellis, Room 2B271, 4000 Defense Pentagon, Washington, DC 20301-4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and

associated collection instruments, please write to the above address or call (703) 697-9269.

Title, Applicable, and OMB Control Number: DoD Loan Repayment Program (LRP); DD Form 2475; OMB Control Number 0704-0152.

Needs and Uses: Military Services are authorized to repay student loans for individuals who meet certain criteria and who enlist for active military service or enter Reserve service for a specified obligation period. Applicants who qualify for the program forward the DD Form 2475, "DoD Educational Loan Repayment Program (LRP) Annual Application," to their Military Service Personnel Office for processing. The Military Service Personnel Office verifies the information and fills in the loan repayment date, address and phone number. For the Reserve Components, the Military Service Personnel Office forwards the DD Form 2475 to the lending institution. For the active-duty Service, the Service member mails the form to the lending institution. The lending institution confirms the loan status and certification and mails the form back to the Military Service Personnel Office.

Affected Public: Business or other for-profit.

Annual Burden Hours (Including Recordkeeping): 6,750 hours.

Number of Respondents: 27,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Public Laws 99-145 and 100-180 authorize the Military Services to repay student loans for individuals who agree to enter the military in specific occupational areas for a specified service obligation period. The legislation requires the Services to verify the status of the individual's loan prior to repayment. The DD Form 2475, "DoD Educational Loan Repayment Program (LRP) Annual Application," is used to collect the necessary verification data from the lending institution.

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02-28722 Filed 11-12-02; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of summary of public comment received regarding proposed amendments to the Manual for Courts-Martial, United States (2000 ed.).

SUMMARY: The JSC is forwarding final proposed amendments to the Manual for Courts-Martial, United States (2000 ed.) (MCM) to the Department of Defense. The proposed changes, resulting from the JSC's 2002 annual review of the MCM, concern the rules of procedure applicable in trials by courts-martial. The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

ADDRESSES: Comments and materials received from the public are available for inspection or copying at the Headquarters, U.S. Marine Corps, Military Law Branch, 2 Navy Annex, Washington, DC 20380-1775, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Major C. G. Carlson, USMC, Executive Secretary, Joint Service Committee on Military Justice, Headquarters, U.S. Marine Corps (JAM), 2 Navy Annex, Washington, DC 20380-1775, (703) 614-4250, (703) 695-0335 fax.

SUPPLEMENTARY INFORMATION:

Background

On 20 May 2002, the JSC published a Notice of Proposed Amendments to the Manual for Courts-Martial and a Notice of Public Meeting to receive comment on its 2002 draft annual review of the Manual for Courts-Martial. On 27 June 2002, the public meeting was held. Three individuals and two members of the press attended the public meeting. Only one individual on behalf of an organization provided oral comment. The JSC received one letter commenting on the proposed amendments.

Purpose

The proposed changes concern the rules of procedure applicable in trials by courts-martial. More specifically, the

proposed changes: require the convening authority to take affirmative action in referring an eligible offense for trial as a capital case; clarify rules prohibiting unreasonable multiplication of charges; provide for trial by twelve members in capital cases, where reasonably available; make a technical change substituting "hardship duty pay" for "foreign duty pay"; amends the rules and procedures applicable to sealed exhibits; explain that the military judge must determine as a matter of law whether an order is lawful; broadens the threat or hoax offense to include weapons of mass destruction, biological and chemical agents, and hazardous materials; and increases the maximum punishment for violation of the threat or hoax article.

Discussion of Comments and Changes

In response to the request for public comment the JSC received oral and written comments on behalf of one organization. The JSC considered the public comments and is satisfied that the proposed amendments are appropriate to implement without additional modification. The JSC will forward the public comments and the proposed amendments, as modified, to the Department of Defense.

The oral and written comments provided by the organization regarding the proposed substantive changes follow:

a. Noted that in the capital courts-martial provisions no effective date was listed for the application of the twelve-member panel procedures in the rule even though the statute applied the change to offenses occurring after December 31, 2002.

b. Stated that the JSC's expansion of Paragraph 109 may be improper given that the amendment appears to create a new offense. The organization objected to this new paragraph on the grounds that the creation of new offenses is a legislative prerogative and not a rulemaking task of the President.

c. Opposed changing Article 90 to make determination of lawfulness of an order a question of law where the JSC has premised such a change on *U.S. v. New*, 55 M.J. 95 (CAAF). The organization contended that *New* involved Article 92 instead of Article 90. The organization stated that an explanation is necessary and change to Article 90 should be held in abeyance.

d. Observed that the Analyses as presented are inadequate and do not provide a sufficient explanation for the Committee's recommendations.

The JSC has considered these comments and has determined that the rulemaking process is adequate, satisfies

statutory requirements, and provides sufficient opportunity for public participation. The JSC has determined that its proposed amendment to Paragraph 109 does not improperly infringe on the legislative prerogative of the Congress. Additionally, the proposed amendment to Article 90 is appropriate because the definition of lawfulness in Article 92 is identical to the definition in Article 90 and extending CAAF's holding to Article 90 is a proper exercise of the President's rulemaking authority.

Proposed Amendments After Consideration of Public Comment Received

The proposed amendments to the Manual for Courts-Martial are as follows:

Amend R.C.M. 103(2) by deleting "without" and replacing with "with" and by deleting "noncapital" and replacing with "capital."

Amend the Analysis accompanying R.C.M. 103(2) by inserting the following prior to the discussion of subsection (3):

"200__ Amendment: This definition is based on *United States v. Mathews*, 16 M.J. 354 (C.M.A. 1983), and R.C.M. 1004, and is consistent with the numerous affirmative steps required of a convening authority in order to refer a court-martial case as capital. See R.C.M. 1004 and accompanying analysis at Appendix 21, R.C.M. 1004."

Amend R.C.M. 201(f)(1)(A)(iii)(b) by substituting the following therefor:

"(b) The case has not been referred with a special instruction that the case is to be tried as capital."

Amend the Analysis accompanying R.C.M. 201(f) by inserting the following prior to the discussion of subsection (f)(2):

"200__ Amendment: Subsection (1)(A)(iii)(b) was changed to reflect that a convening authority must affirmatively act to refer a capital punishment eligible offense for trial as a capital case."

Amend R.C.M. 307(c)(4) by inserting the following at the end thereof:

"What is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person."

Amend the Discussion accompanying R.C.M. 307(c)(4) by striking the first sentence.

Amend the Analysis accompanying R.C.M. 307(c)(4) by inserting the following prior to the discussion of subsection (c)(5):

"200__ Amendment: The first sentence of the non-binding discussion was moved, *en toto*, to subsection (4) to reflect the decision of *United States v. Quiroz*, which identifies the prohibition against the unreasonable multiplication of charges as a 'a long-standing principle' of military law. See *United States v. Quiroz*, 55 M.J. 334 (CAAF 2001)."

Amend R.C.M. 501(a)(1)(A) to read as follows:

"(A) A military judge and, except in capital cases, not less than five members."

Amend R.C.M. 501(a)(1) by inserting the following subparagraph (C) to read as follows:

"(C) In all capital cases, a military judge and no fewer than twelve members, unless twelve members are not reasonably available because of physical conditions or military exigencies. If fewer than twelve members are reasonably available, the convening authority shall detail the next lesser number of reasonably available members under twelve, but in no event fewer than five. In such a case, the convening authority shall state in the convening order the reasons why twelve members are not reasonably available."

Amend R.C.M. 805(b) by replacing the current second sentence with the following:

"No general court-martial proceeding requiring the presence of members may be conducted unless at least 5 members are present, or in capital cases, at least twelve members are present except as provided in R.C.M. 501(a)(1)(C), where twelve members are not reasonably available because of physical conditions or military exigencies. No special court-martial proceeding requiring the presence of members may be conducted unless at least 3 members are present except as provided in R.C.M. 912(h)."

Amend R.C.M. 1003(b)(2) by deleting "foreign" and substituting "hardship" therefor.

Amend the Analysis accompanying R.C.M. 1003(b)(2) by inserting the following paragraph:

"200__ Amendment: Hardship Duty Pay (HDP) superceded Foreign Duty Pay (FDP) on 3 February 1999. HDP is payable to members entitled to basic pay. The Secretary of Defense has established that HDP will be paid to members (a) for performing specific missions, or (b) when assigned to designated areas."

Amend R.C.M. 1004(b) by inserting the following after "(1) Notice," and before "Before":

"(A) Referral. The convening authority shall indicate that the case is to be tried as a capital case by including a special instruction in the referral block of the charge sheet. Failure to include this special instruction at the time of the referral shall not bar the convening authority from later adding the required special instruction, provided:

(i) that the convening authority has otherwise complied with the notice requirement of subsection (B); and

(ii) that if the accused demonstrates specific prejudice from such failure to include the special instruction, a continuance or a recess is an adequate remedy.

"(B) Arraignment."

Amend the analysis accompanying R.C.M. 1004(b) by substituting the following paragraph for the current first paragraph:

"200__ Amendment: Subsection (1)(A) is intended to provide early and definitive notice that the case has been referred for trial as a capital case. Subsection (1)(B) is intended to provide the defense written notice of the aggravating factors it intends to prove, yet afford some latitude to the prosecution to provide later notice, recognizing that the exigencies of proof may prevent early notice in some cases."

Insert the following new R.C.M. 1103A to read as follows:

“Sealed exhibits and proceedings. If the record of trial contains exhibits, proceedings, or other matter ordered sealed by the military judge, the trial counsel shall cause such materials to be sealed so as to prevent indiscriminate viewing or disclosure. Trial counsel shall ensure that such materials are properly marked, including an annotation that the material was sealed by order of the military judge, and inserted at the appropriate place in the original record of trial. Copies of the record shall contain appropriate annotations that matters were sealed by order of the military judge and have been inserted in the original record of trial. Except as provided in the following subsections to this rule, sealed exhibits may not be opened by any party.

(1) *Examination of sealed matters.* For the purpose of this rule, “examination” includes unsealing the sealed documents, reading, viewing, or manipulating them in any way. “Examination” under this rule does not include photocopying, photographing, duplicating, or disclosing in any manner in the absence of an order from appropriate authority.

(A) *Prior to authentication.* Prior to authentication of the record by the military judge, sealed materials may not be examined in the absence of an order from the military judge based on good cause shown.

(B) *Authentication through action.* After authentication and prior to disposition of the record of trial pursuant to Rule for Courts-Martial 1111, sealed materials may not be examined in the absence of an order. Such order may be issued from the military judge upon a showing of good cause at a post-trial Article 39a session directed by the Convening Authority.

(C) *Reviewing and appellate authorities.*

(i) Reviewing and appellate authorities may examine sealed matters when those authorities determine that such action is reasonably necessary to a proper fulfillment of their responsibilities under the Uniform Code of Military Justice, the Manual for Courts-Martial, governing directives, instructions, regulations, applicable rules for practice and procedure or rules of professional responsibility.

(ii) Reviewing and appellate authorities shall not, however, disclose sealed matter or information in the absence of:

(a) Prior authorization of the Judge Advocate General in the case of review under Rule for Courts-Martial 1201(b); or

(b) Prior authorization of the appellate court before which a case is pending in the case of review under Rules for Courts-Martial 1203 and 1204.

(iii) In those cases in which review is sought or pending before the United States Supreme Court, authorization to disclose sealed materials or information shall be obtained under that Court’s rules of practice and procedure.

(iv) The authorizing officials in paragraph (ii) above may place conditions on authorized disclosures in order to minimize the disclosure.

(v) Reviewing and appellate authorities include:

(a) Judge advocates reviewing records pursuant to Rule for Courts-Martial 1112;

(b) Officers and attorneys in the office of the Judge Advocate General reviewing records pursuant to Rule for Courts-Martial 1201(b);

(c) Appellate government counsel;

(d) Appellate defense counsel;

(e) Appellate judges of the Courts of Criminal Appeals and their professional staffs;

(f) The judges of the United States Court of Appeals for the Armed Forces and their professional staffs;

(g) The Justices of the United States Supreme Court and their professional staff; and

(h) Any other court of competent jurisdiction.”

Insert the following *Analysis to accompany new R.C.M. 1103A*:

“200 Amendment: The 1998 amendments to the Manual for Courts-Martial introduced the requirement to seal M.R.E. 412 (rape shield) motions, related papers, and the records of the hearings, to “fully protect an alleged victim of [sexual assault] against invasion of privacy and potential embarrassment.” MCM Appendix 22, p. 36. As current rule 412(c)(2) reads, it is unclear whether appellate courts are bound by orders sealing 412 information issued by the military judge. See, e.g., *United States v. Stirewalt*, 53 M.J. 582 (C.G.C.C.A. 2000).

On a larger scale, the effect and scope of a military judge’s order to seal exhibits, proceedings, or materials is similarly unclear. Certain aspects of the military justice system, particularly during appellate review, seemingly mandate access to sealed materials. For example, appellate defense counsel have a need to examine an entire record of trial to advocate thoroughly and knowingly on behalf of a client. Yet there is some uncertainty about appellate defense counsel’s authority to examine sealed materials in the absence of a court order.

The rule is designed to respect the privacy and other interests that justified sealing the material in the first place, while at the same time recognizing the need for certain military justice functionaries to review that same information. The rule favors an approach relying on the integrity and professional responsibility of those functionaries, and assumes that they can review sealed materials and at the same time protect the interests that justified sealing the material in the first place. Should disclosure become necessary, then the party seeking disclosure is directed to an appropriate judicial or quasi-judicial official or tribunal to obtain a disclosure order.”

Amend Manual for Courts-Martial, Part IV, Paragraph 14c(2)(a), by inserting the following new subparagraph (ii) and renumbering existing subparagraphs (a)(ii) through (iv) as (a)(iii) through (v):

“(ii) Determination of lawfulness. The lawfulness of an order is a question of law to be determined by the military judge.”

Amend Manual for Courts-Martial, Part IV, Paragraph 109, by deleting the current text and replacing with the following:

“109. ARTICLE 134—Threat or hoax designed or intended to cause panic or public fear.

a. Text. See paragraph 60.

b. Elements.

(1) Threat.

(a) That the accused communicated certain language;

(b) That the information communicated amounted to a threat;

(c) That the harm threatened was to be done by means of an explosive, weapon of mass destruction, biological, or chemical agent, substance, or weapon, or hazardous material;

(d) That the communication was wrongful; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) Hoax.

(a) That the accused communicated or conveyed certain information;

(b) That the information communicated or conveyed concerned an attempt being made or to be made by means of an explosive, weapon of mass destruction, biological, or chemical agent, substance or weapon, or hazardous material to unlawfully kill, injure, or intimidate a person or to unlawfully damage or destroy certain property;

(c) That the information communicated or conveyed by the accused was false and that the accused then knew it to be false;

(d) That the communication of the information by the accused was malicious; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation:*

(1) *Threat.* A “threat” means an expressed present determination or intent to kill, injure, or intimidate a person or to damage or destroy certain property presently or in the future. Proof that the accused actually intended to kill, injure, intimidate, damage, or destroy is not required.

(2) *Explosive.* “Explosive” means gunpowder, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electrical circuit breakers), detonators, and other detonating agents, smokeless powders, any explosive bomb, grenade, missile, or similar device, and any incendiary bomb or grenade, fire bomb, or similar device, and any other explosive compound, mixture, or similar material.

(3) *Weapon of mass destruction.* A weapon of mass destruction is a device designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; or any weapon involving a disease organism; or any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

(4) *Biological agent.* The term “biological agent” means any micro-organism (including bacteria, viruses, fungi, rickettsiac, or protozoa), pathogen, or infectious substance, and any naturally occurring, bioengineered, or synthesized component of any such micro-organism, pathogen, or infectious substance, whatever its origin or method of production, that is capable of causing—

(i) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(ii) deterioration of food, water, equipment, supplies, or materials of any kind; or

(iii) deleterious alteration of the environment.

(5) *Chemical agent, substance, or weapon.*

A chemical agent, substance or weapon refers to a toxic chemical and its precursors and or a munition or device, specifically designed to cause death or other harm through toxic properties of those chemicals which would be released as a result of the employment of such munition or device, and any equipment specifically designed for use directly in connection with the employment of such munitions or devices.

(6) *Hazardous material.* A substance or material (including explosive, radioactive material, etiologic agent, flammable or combustible liquid or solid, poison, oxidizing or corrosive material, and compressed gas, or mixture thereof) or a group or class of material designated as hazardous by the Secretary of Transportation.

(7) *Malicious.* A communication is "malicious" if the accused believed that the information would probably interfere with the peaceful use of the building, vehicle, aircraft, or other property concerned, or would cause fear or concern to one or more persons.

d. *Lesser included offenses.*

(1) Threat.

(a) Article 134—communicating a threat

(b) Article 80—attempts

(c) Article 128—assault

(2) Hoax. Article 80—attempts.

e. *Maximum punishment.* Dishonorable discharge, forfeitures of all pay and allowances and confinement for 10 years.

f. *Sample specifications.*

(1) Threat.

In that _____ (personal jurisdiction data) did, (at/on board—location) on or about _____ 20____, wrongfully communicate certain information, to wit: _____, which language constituted a threat to harm a person or property by means of a(n) [explosive, weapon of mass destruction, biological agent or substance, chemical agent or substance and/or (a) hazardous material(s)].

(2) Hoax.

In that _____ (personal jurisdiction data) did, (at/on board—location), on or about _____ 20____, maliciously (communicate) (convey) certain information concerning an attempt being made or to be made to unlawfully [(kill) (injure) (intimidate) _____] [(damage) (destroy) _____] by means of a(n) [explosion, weapon of mass destruction, biological agent or substance, chemical agent or substance, and/or (a) hazardous material(s)], to wit: _____, which information was false and which the accused then knew to be false."

Amend the Analysis accompanying Punitive Article 134, Paragraph 109, subparagraph c, by inserting the following at the end thereof:

"200__ Amendment: This paragraph has been expanded to annunciate the various means by which a threat or hoax is based. Whereas explosives were the instruments

most commonly used in the past, new types of weapons have developed. These devices include weapons of mass destruction, chemical agents, biological agents, and hazardous materials."

Amend the Analysis accompanying Punitive Article 134, Paragraph 109, subparagraph e, by inserting the following at the end thereof:

"200__ Amendment: This amendment increases the maximum punishment currently permitted under paragraph 109 from 5 years to 10 years. Ten years is the maximum period of confinement permitted under 18 U.S.C. 844(e), the U.S. Code section upon which the original paragraph 109 is based.

Amend the Analysis accompanying Punitive Article 90 by inserting the following new subparagraph c(2)(a)(ii) and renumbering existing subparagraphs (a)(ii) through (iv) as (a)(iii) through (v):

"200__ Amendment: The Court of Appeals for the Armed Forces held that the lawfulness of an order is a question of law to be determined by the military judge, not the trier of fact. See *United States v. New*, 55 M.J. 95 (C.A.A.F.)."

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02-28725 Filed 11-12-02; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Class Tuition Waivers

AGENCY: Department of Defense Education Activity (DoDEA), Defense (DoD).

ACTION: Notice.

SUMMARY: The Secretary of Defense is authorized by Section 1404(c) of Public Law 95-561, "Defense Dependents' Education Act of 1978," as amended, 20 U.S.C. 923(c) to identify classes of dependents who may enroll in DoD Dependent Schools (DoDDS) if there is space available and to waive tuition for any such classes. Through DoD Directive 1342.13, "Eligibility Requirements for Education of Minor Dependents in Overseas Areas," dated July 8, 1982, as amended, paragraph 5.3.4, the Secretary has delegated to the Office of the Assistant Secretary of Defense for Force Management Policy (ASD) (FMP) the authority to identify those classes of dependents for whom tuition may be waived.

This notice announces that the ASD (FMP) designated certain classes of dependents for whom tuition may be waived on a space-available, tuition-free basis on the dates listed below:

August 16, 2002—Dependents, whose second language is English, of personnel assigned to the Argentinean Liaison Office, International Coordination Center (ICC) Headquarters, Supreme Headquarters Allied Powers, Europe (SHAPE) in Belgium. This waiver applies to dependents attending SHAPE Elementary School and SHAPE High School. This class tuition waiver is in effect only for School Year 2002-2003.

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02-28721 Filed 11-12-02; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Practice Implementation Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Business Practice Implementation Board (DBB) will meet in open session on Thursday, November 21, 2002, at the Pentagon, Washington, DC from 0900 until 1030. The mission of the DBB is to advise the Senior Executive Council (SEC) and the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board's Management Information Task Group will deliberate on its findings and proposed recommendations related to tasks assigned earlier this year.

DATES: Thursday, November 21, 2002, 0900 to 1030 hrs.

ADDRESSES: Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The DBB may be contacted at: Defense Business Practice Implementation Board, 1100 Defense Pentagon, Washington, DC 20301-1100, via E-mail at DBB@osd.pentagon.mil, or via phone at (703) 695-0505.

SUPPLEMENTARY INFORMATION: Members of the public who wish to attend the meeting must contact the Defense Business Practices Implementation Board no later than Thursday, November 14 for further information about admission as seating is limited. Additionally, those who wish to make oral comments or deliver written comments should also request to be

scheduled, and submit a written text of the comments by Wednesday, November 13 to allow time for distribution to the Board members prior to the meeting. Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding thirty-minutes.

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02-28723 Filed 11-12-02; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: Assistant Secretary of Defense for Force Management Policy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held. The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests and renorming of the tests.

DATES: December 5, 2002, from 8 a.m. to 5 p.m., and December 6, 2002, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Mulberry Inn, Savannah, Georgia.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301-4000, telephone (703) 697-9271.

SUPPLEMENTARY INFORMATION: Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number above no later than November 20, 2002.

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02-28724 Filed 11-12-02; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 13, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 6, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual Protection and Advocacy of Individual Rights (PAIR) Program Performance Report.

Frequency: Annually.

Affected Public:

Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57. *Burden Hours:* 342.

Abstract: Form RSA-509 will be used to analyze and evaluate the Protection and Advocacy of Individual Rights (PAIR) Program administered by eligible systems in states. These systems provide services to eligible individuals with disabilities to protect their legal and human rights.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2182. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202-4651 or to the e-mail address vivian_reese@ed.gov. Requests may also be electronically mailed to the internet address OCIO_RIMG@ed.gov or faxed to (202) 708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 02-28741 Filed 11-12-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 13, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th

Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Karen_F_Lee@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 6, 2002.

John D. Tressler,

*Leader, Regulatory Management Group,
Office of the Chief Information Officer.*

Office of the Under Secretary

Type of Review: New.

Title: Longitudinal Assessment of CSR Implementation and Outcomes (LACIO).

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 4,380.

Burden Hours: 2,567.

Abstract: This evaluation assesses the accomplishments of the CSR program in implementing school reform and thereby improving student achievement. The evaluation also makes a preliminary assessment of the conditions influencing the sustainability of reforms once federal support ends. The evaluation uses a variety of data sources to understand the complex interplay of state policies, school district, educational support, and CSR school conditions affecting CSR implementation and outcomes. The

major evaluation questions are: (1) To what extent have CSR-supported schools made gains on state assessments in comparison to gains for schools in the same state with similar characteristics; (2) How effective is CSR support for reform; and (3) How have district policies and state policies affected CSR implementation and comprehensive school reform. A mixed method approach will be used to collect appropriate data for addressing each evaluation question. The methods include mail surveys of 400 CSR-program and 40 non-CSR program schools, telephone surveys of 50 districts and 20 states, and a case study inquiry of 30 "sites" to provide data on vertical slices of the CSR program (each "site" comprises a CSR school and comparison school, as well as the district, state, and support infrastructure in which the schools operate). Evaluators will be able to link information from these various sources in order to provide policymakers and other stakeholders with coherent findings.

Requests for copies of the submission for OMB review; comment request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2091. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202-4651 or to the e-mail address vivan.reese@ed.gov. Requests may also be electronically mailed to the internet address OCIO_RIMG@ed.gov or faxed to (202) 708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to James Jones at James.Jones@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 02-28742 Filed 11-12-02; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

**Federal Energy Regulatory
Commission**

[Docket No. RP03-57-000]

**Alliance Pipeline L.P.; Notice of
Proposed Change in FERC Gas Tariff**

November 6, 2002.

Take notice that on October 31, 2002, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 279, to become effective December 1, 2002.

Alliance states that Sheet No. 279 sets forth the available delivery points on its pipeline system. Alliance further states that it recently added a new delivery point located at Richland County, North Dakota, for the purpose of delivering volumes of natural gas to Tri-State Ethanol Company, L.L.C. Alliance is submitting Second Revised Sheet No. 279 to reflect the addition of the new delivery point to the list of delivery points available under its FERC Gas Tariff.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-28780 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-301-058]

ANR Pipeline Company; Notice of Negotiated Rate

November 6, 2002.

Take notice that on October 31, 2002, ANR Pipeline Company, (ANR) tendered for filing three negotiated rate agreements between ANR and ExxonMobil Gas Marketing Company, a division of Exxon Mobil Corporation pursuant to ANR's Rate Schedules PTS-2, ITS and ITS (Liquefiabiles). ANR tenders these agreements pursuant to its authority to enter into negotiated rate agreements. ANR also requests confidential treatment of a Lease Dedication Agreement. ANR requests that the Commission accept and approve the agreements to be effective November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-28795 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-301-059]

ANR Pipeline Company; Notice of Negotiated Rate

November 6, 2002.

Take notice that on November 1, 2002, ANR Pipeline Company, (ANR) tendered for filing two negotiated rate agreements between ANR and Ocean Energy, Inc. pursuant to ANR's Rate Schedules ITS and ITS (Liquefiabiles). ANR tenders these agreements pursuant to its authority to enter into negotiated rate agreements. ANR also requests confidential treatment of a Lease Dedication Agreement. ANR requests that the Commission accept and approve the agreements to be effective December 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-28796 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-301-060]

ANR Storage Company; Notice of Material Deviation Filing

November 6, 2002.

Take notice that on November 1, 2002, ANR Pipeline Company (ANR), tendered for filing a Lease Dedication Agreement entered into with Minerals Management Service (MMS). ANR seeks confidential treatment of the Lease Dedication Agreement.

To the extent Commission approval of the Lease Dedication Agreement is required under the circumstances, ANR respectfully requests that the Commission accept and approve the MMS Lease Dedication Agreement to be effective November 1, 2002.

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 November 13, 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. 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. 02-28797 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP03-60-000]

CenterPoint Energy Gas Transmission
Company; Notice of Proposed
Changes in FERC Gas Tariff

November 6, 2002.

Take notice that on November 1, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective December 1, 2002.

CEGT states that the purpose of this filing is to revise its Tariff to make certain changes primarily of a "housekeeping" nature.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-28782 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP96-200-089]

CenterPoint Energy Gas Transmission
Company; Notice of Negotiated Rate

November 6, 2002.

Take notice that on November 1, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective November 1, 2002:

Original Sheet No. 659
Original Sheet No. 660
Original Sheet No. 661
Original Sheet No. 662
Original Sheet No. 663
Sheet Nos. 664-699

CEGT states that the purpose of this filing is to reflect the implementation of two new negotiated rate transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-28787 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP96-190-021]

Colorado Interstate Gas Company;
Notice of Negotiated Rates

November 6, 2002.

Take notice that on October 31, 2002, Colorado Interstate Gas Company (CIG) tendered for filing a Firm Transportation Service Agreement (FTSA) and the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, Eighth Revised Sheet No. 1; Original Sheet No. 11O; Original Sheet No. 11P; Original Sheet No. 11Q; Original Sheet No. 11R and Original Sheet No. 11S, to be effective December 1, 2002.

CIG states that the tendered tariff sheets, which are proposed to become effective December 1, 2002, implement three negotiated rate transactions representing partial contractual subscription of the Valley Line 2002 Expansion Project at Docket No. CP01-45-000, *et al.* In addition, the FTSA, which also constitutes an additional level of capacity subscription for the Valley Line 2002 Expansion Project, is being submitted for acceptance under the Commission's negotiated rate and material deviation policies, if applicable, and is also proposed to become effective December 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically

via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02-28786 Filed 11-12-02; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-389-070]

Columbia Gulf Transmission Company; Notice of Compliance Filing

November 6, 2002.

Take notice that on November 1, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Seventh Revised Sheet No. 316, to become effective October 22, 2002.

Columbia Gulf states on September 27, 2002, it made a filing with the Commission seeking approval of a Rate Schedule PAL negotiated rate agreement Occidental Energy Marketing, Inc. (Occidental) in Docket No. RP96-389-068. On October 22, 2002, the Commission issued an order approving the service agreement effective October 1, 2002. The order directed Columbia Gulf to file a tariff sheet identifying the agreement as a non-conforming agreement in compliance with Section 154.112(b) of the Commission's regulations. The instant filing is being made to comply with Section 154.112(b) and reference the non-conforming service agreement in its Volume No. 1 tariff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *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. 02-28790 Filed 11-12-02; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00-319-002 and RP00-598-002]

Discovery Gas Transmission LLC; Notice of Compliance Filing

November 6, 2002.

Take notice that on October 31, 2002, Discovery Gas Transmission LLC (Discovery) tendered for filing in its FERC Gas Tariff, Original Volume No. 1, the following pro forma tariff sheet in compliance with the Commission's Order on Compliance with Order Nos. 637, 587-G and 587-L, issued May 1, 2002:

Substitute Original Sheet No. 197

Discovery further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings.

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. 02-28773 Filed 11-12-02; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-21-000]

Eastern Shore Natural Gas Company; Notice of Tariff Filing

October 31, 2002.

Take notice that on October 15, 2002, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, second revised volume no. 1, first revised sheet no. 10, with an effective date of November 1, 2002.

Eastern Shore states that section 38(b), "Gas Supply Realignment Costs" authorizes it to seek recovery of all gas supply realignment costs prudently incurred as a result of implementing, in connection with implementing, or attributable to the requirements of FERC Order No. 636.

Eastern Shore states that such prudently incurred costs are now known and measurable in the amount of \$196,379.71 and therefore seeks the necessary authorization to recover such costs in accordance with the General Terms and Conditions of its tariff.

Eastern Shore states that, consistent with the Commission's policy and the general terms and conditions of its FERC Gas Tariff, 90 % of such costs, or \$176,741.74, is recoverable from eligible firm customers while the remaining 10 %, or \$19,637.97, is recoverable through a volumetric surcharge of \$0.0185 per dekatherm applied to deliveries made pursuant to Eastern Shore's rate schedule IT.

Eastern Shore states that copies of its filing has been mailed to its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before November 7, 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. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02-28801 Filed 11-13-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-62-000]

El Paso Natural Gas Company; Notice of Service Agreement

November 6, 2002.

Take notice that on November 1, 2002, El Paso Natural Gas Company (EPNG) tendered for filing a contract provision for review by the Commission under its material deviation policies. EPNG states that copies of the filing have been served upon all shippers on EPNG's system and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before November 13, 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. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the

Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02-28784 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-287-059]

El Paso Natural Gas Company; Notice of Negotiated Rate

November 6, 2002.

Take notice that on November 1, 2002, El Paso Natural Gas Company (EPNG) tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1-A, the following tariff sheets, to become effective November 1, 2002:

Thirty-Sixth Revised Sheet No. 30
Thirtieth Revised Sheet No. 31

EPNG states that the tariff sheets are being filed to implement new negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95-6-000 and RM96-7-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party

must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02-28792 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-56-000]

Guardian Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2002.

Take notice that on October 31, 2002, Guardian Pipeline, L.L.C. (Guardian), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets listed in Appendix A attached to the filing, to be effective December 1, 2002.

Guardian states that the purpose of this filing is to establish two new rate schedules: (1) An enhanced aggregation and wheeling service under Rate Schedule EAW, and (2) a parking and lending service under Rate Schedule PAL. Guardian explains that these new services, developed by Guardian in conjunction with its shippers, will enable Guardian's current and future shippers to maximize the flexibility of the transportation services offered by Guardian as well as maximize opportunities to move gas between the pipelines with which Guardian interconnects upstream of its Joliet Compressor Station. Guardian also states that these services will be useful imbalance management tools for shippers consistent with the Commission's direction in Order No. 637. Guardian's Rate Schedule EAW and Rate Schedule PAL are described in detail in Guardian's filing in this docket.

Guardian states that copies of this tariff filing are being served on its shippers and the Wisconsin and Illinois public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-28779 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-61-000]

Gulf States Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2002.

Take notice that on November 1, 2002, Gulf States Transmission Corporation (Gulf States) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, certain tariff sheets listed on Appendix A to the filing with an effective date of October 1, 2002.

Gulf States states that the filing is being made to reflect sequential

pagination of tariff sheets that were accepted by the Commission on September 25, 2002 in Gulf States Order No. 637 compliance filing and accepted on September 27, 2002 in Gulf States Order No. 587-O compliance filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-28783 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-118-005]

High Island Offshore System, L.L.C.; Notice of Negotiated Rate Filing

November 6, 2002.

Take notice that on October 31, 2002, High Island Offshore System, L.L.C. (HIOS) tendered for filing a Negotiated Rate Arrangement with ExxonMobil Gas Marketing Company (ExxonMobil). HIOS requests that the Commission approve the Negotiated Rate Arrangement effective November 1, 2002.

HIOS states that the filed Negotiated Rate Arrangement reflects negotiated rates between HIOS and ExxonMobil for transportation under Rate Schedule FT-2 beginning November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-28777 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98-18-006]

Iroquois Gas Transmission System, L.P.; Notice of Negotiated Rate

November 6, 2002.

Take notice that on November 1, 2002, Iroquois Gas Transmission System, L.P. tendered for filing Fourth Revised Sheet No. 6. Iroquois requests that the Commission approve the tariff sheet effective November 1, 2002.

Iroquois states that the revised tariff sheets reflect a negotiated rate between Iroquois and Sempra Energy Trading Corp. for transportation under Rate

Schedule RTS beginning on November 1, 2002 through November 1, 2004.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-28793 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02-412-001]

KO Transmission Company; Notice of Compliance Filing

November 6, 2002.

Take notice that on November 1, 2002, KO Transmission Company (KOT) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet with a proposed effective date of October 1, 2002:

Substitute Fourth Revised Sheet No. 147

KOT tendered this tariff filing as required by the Commission's Letter Order issued September 30, 2002, wherein the Commission accepted KOT's filing in compliance with Order No. 587-0, but directed that tariff sheets be revised and refiled to reflect only Version 1.5 as the current version for all applicable NAESB standards.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. 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. 02-28778 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-176-071]

Natural Gas Pipeline Company of America; Notice of Negotiate Rate

November 6, 2002.

Take notice that on November 1, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain revised tariff sheets, to be effective December 1, 2002.

Natural states that the purpose of this filing is to implement an extension to an existing negotiated rate transaction under Natural's Rate Schedule FTS pursuant to Section 49 of the General

Terms and Conditions of Natural's Tariff. Natural states that the revised negotiated rate agreement does not deviate in any material respect from the applicable form of service agreement in Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99-176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-28794 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02-2435-000 and ER02-2435-001]

Orion Power New York GP II, Inc.; Notice of Issuance of Order

November 5, 2002.

Orion Power New York GP II, Inc. (Orion New York) submitted for filing a proposed tariff under which Orion New York will engage in the sales of energy

and capacity at market-based rates, and for the reassignment of transmission capacity. Orion New York also requested waiver of various Commission regulations. In particular, Orion New York requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Orion New York.

On October 18, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Orion New York 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).

Absent a request to be heard in opposition within this period, Orion New York is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Orion New York, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Orion New York's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 18, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. This order is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-

Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,
Secretary.

[FR Doc. 02-28771 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-513-021]

Questar Pipeline Company; Notice of Negotiated Rate

November 6, 2002.

Take notice that on November 1, 2002, Questar Pipeline Company's (Questar) tendered for filing a tariff filing to implement a negotiated-rate contract for BP Energy Company and the deletion of the expired contract with Dominion Exploration & Production, Inc. as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99-513, *et al.* The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T-1, NNT, T-2, PKS, FSS and ISS shippers.

Questar states that copies of this filing have been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact

(202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-28798 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-312-115]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

November 6, 2002.

Take notice that on October 31, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Project Orange Associates, LLC. Tennessee requests that the Commission grant such approval effective December 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages

electronic filings. *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. 02-28788 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-58-000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2002.

Take notice that on October 31, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, the tariff sheets listed on Appendix A to the filing, to become effective December 1, 2002.

Texas Eastern asserts that the purpose of this filing is to comply with the Stipulation and Agreement filed by Texas Eastern on December 17, 1991 in Docket Nos. RP88-67, *et al.* (Phase II/PCBs) and approved by the Commission on March 18, 1992 (Settlement), and with Section 26 of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1.

Texas Eastern states that such tariff sheets reflect a decrease in the PCB-Related Cost component of Texas Eastern's currently effective rates. For example, the decrease in the 100% load factor average cost of long-haul service under Rate Schedule FT-1 from Access Area Zone ELA to Market Zone 3 is \$0.0001 per dekatherm.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions. Copies of this filing have also been mailed to all parties on the service list in Docket Nos. RP88-67, *et al.* (Phase II/PCBs).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02-28781 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP88-67-078]

Texas Eastern Transmission, LP; Notice of Refund Report

November 6, 2002.

Take notice that on October 31, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, and First Revised Volume No. 2, revised tariff sheets as listed on Appendix A to the filing, to become effective December 1, 2002. In addition, Texas Eastern submitted its Annual Interruptible Revenue Reconciliation Report pursuant to its Amended Global Settlement.

Texas Eastern states that the revised tariff sheets and the Annual Interruptible Revenue Reconciliation Report contained in the filing are being filed (i) pursuant to Section 15.6, Applicable Shrinkage Adjustment (ASA), and Section 15.8, Periodic Reports, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1, (ii) in compliance with the Stipulation and Agreement (Global Settlement) approved by the Commission in its order issued May 12, 1994 [67 FERC ¶ 61,170, reh'g denied, 68 FERC ¶ 61,062 (1994)], and (iii) in compliance with the

Joint Stipulation and Agreement Amending Global Settlement (Amended Global Settlement) approved by the Commission in its order issued August 28, 1998 [84 FERC ¶ 61,200 (1998)].

Texas Eastern states that by this filing, it is reducing by approximately 25% the level of its ASA Usage Surcharge included in its rates, and reflecting minor changes in its ASA Percentages, which are designed to retain in-kind the projected quantities of gas required for the operation of Texas Eastern's system in providing service to its customers. These adjustments are effective for the twelve month period beginning December 1, 2002.

Texas Eastern also states that the combined impact on Texas Eastern's rates of this filing, in conjunction with the Annual PCB-Related Costs filing being submitted concurrently, is a net decrease of 0.79 cents in the 100% load factor price for typical long-haul service under Rate Schedule FT-1 from Access Area Zone East Louisiana to Market Zone 3 (ELA-M3).

Texas Eastern states that copies of its filing have been mailed to all affected customers of Texas Eastern and interested state commissions, as well as to all parties to the Settlement in Docket No. RP85-177-119, *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 November 13, 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *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. 02-28785 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP00-426-010]

Texas Gas Transmission Corporation; Notice of Negotiated Rate

November 6, 2002.

Take notice that on October 31, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 40, to become effective November 1, 2002.

Texas Gas states that the purpose of this filing is to reflect a negotiated rate agreement with Noble Gas Marketing, Inc.

Texas Gas states that copies of the revised tariff sheets are being mailed to all parties on the service list, Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-28775 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP97-255-053]

TransColorado Gas Transmission Company; Notice of Compliance Filing

November 6, 2002.

Take notice that on November 1, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifty-Second Revised Sheet No. 21, Thirtieth Revised Sheet No. 22 and Twenty-Fifth Revised Sheet No. 22A, to be effective November 1, 2002.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97-255-000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect two amended negotiated-rate contracts with Retex, Inc. and National Fuel Marketing Company and the deletion of two expired contracts with Sempra Energy Trading and Dynegy Marketing & Trade. TransColorado requested waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective November 1, 2002.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings.

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. 02-28791 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP00-260-015]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

November 6, 2002.

Take notice that on October 31, 2002 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing its refund report showing that on October 30, 2002, Transco submitted a report reflecting the flow through of a refund received from Texas Gas Transmission Corporation.

Transco states that it refunded to its FTNT customer, New York Power Authority, \$716,239.06 resulting from the settlement under the related provision of Texas Gas Transmission's FERC Gas Tariff in Docket No. RP00-260. The refund covers the time period from November 1, 2000 to July 31, 2002.

Transco states that copies of this filing have been served on affected shippers and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before November 13, 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. 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. 02-28774 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01-245-013]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

November 6, 2002.

Take notice that on October 30, 2002 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing FERC Gas Tariff, Third Revised Volume No. 1, Sixteenth Revised Sheet No. 27A, with an effective date of December 1, 2002.

Transco states that the purpose of the instant filing is to implement the uncontested settlement of the issue of the design of the rate for service under Transco's Rate Schedule ISS in Transco's Docket No. RP01-245 *et al.*

Transco states that copies of the filing are being mailed to each of its affected customers, interested State Commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. 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. 02-28776 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-359-012]

Transcontinental Gas Pipe Line Corporation; Notice of Negotiated Rates

November 6, 2002.

Take notice that on October 31, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a copy of an executed service agreement between Transco and PSEG Energy Resources and Trade, LLC, that contains a negotiated rate under Rate Schedule FT applicable to the Leidy East Expansion Project.

Transco states that this service agreement is the result of the permanent release of a previously filed Leidy East Expansion Project service agreement containing a negotiated rate. Williams Energy Marketing & Trading Company (WEM&T), a Leidy East Expansion Project Customer, agreed to permanently release 50,000 dekatherms of gas per day of its firm Leidy East transportation service to PSEG Energy Resources and Trade, LLC, effective November 1, 2002, at the same negotiated rate and primary term contained in the WEM&T service agreement included in Transco's October 10, 2002 and October 24, 2002 filings in Docket No. RP96-359-010 and Docket No. RP96-359-011, respectively. This permanent release of Leidy East capacity was effectuated pursuant to Section 42.14 of the General Terms and Conditions of Transco's FERC Gas Tariff. The effective date of the permanent release is November 1, 2002, which is the in-service date of the Leidy East Expansion Project.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the

Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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. 02-28789 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02-416-000]

Williams Gas Pipelines Central Incorporated; Notice of Site Visit

November 6, 2002.

On November 12, 2002, Office of Energy Projects staff will participate in a site visit to the area proposed for construction of a natural gas pipeline by Williams Gas Pipelines Central Incorporated for its Southwest Missouri Expansion Project, in Kansas and Missouri, in the above-referenced docket. The site visit will begin at 12:30 p.m. from the Pizza Hut on Highway 69/7 in Columbus, Kansas. All interested parties may attend the site visit. Those planning to attend must provide their own transportation. Anyone interested in additional information on the site visit may contact the Commission's Office of External Affairs at 1-866-208-FERC.

Magalie R. Salas,
Secretary.

[FR Doc. 02-28769 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03-9-000, et al.]

Great Bay Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

November 5, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Great Bay Power Corporation and Great Bay Power Marketing, Inc.

[Docket No. EC03-9-000]

Take notice that on October 31, 2002, Great Bay Power Corporation (GBPC) and Great Bay Power Marketing, Inc.(GBPM), filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act and 18 CFR part 33 for authority to transfer a purchased power agreement entered into between GBPC and Unutil Power Corp. from GBPC to GBPM. The Applicants request that the Commission act on the application so that the transfer may be consummated before December 31, 2002.

Comment Date: November 21, 2002.

2. Hermiston Generating Company, L.P.

[Docket No. EC03-10-000]

Take notice that on October 31, 2002, Hermiston Generating Company, L.P. (Hermiston) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 203 of the Federal Power Act, 16 U.S.C. section 824b (1994), and part 33 of the Commission's regulations, 18 CFR part 33, an application for authorization to dispose of jurisdictional facilities. More specifically, Buckeye Power Corporation and Larkspur Power Corporation propose to sell up to 50% of their ownership interest in Hermiston to an indirect, wholly-owned subsidiary of Sumitomo Corporation.

Comment Date: November 21, 2002.

3. Arizona Public Service Company

[Docket No. ER99-3288-008]

Take notice that on October 31, 2002, Arizona Public Service Company (APS) tendered for filing Quarterly Refund payments to eligible wholesale customers under the Company's Fuel Cost Adjustment Clause (FAC).

A copy of this filing has been served upon the affected parties, the California Public Utilities Commission, and the Arizona Corporation Commission.

Customer Name	APS-FPC/ FERC Rate Schedule
Electrical District No. 3	12
Tohono O'odham Utility Authority ..	52
Arizona Electric Power Cooperative Wellton-Mohawk Irrigation and Drainage District	57
Arizona Power Authority	58
Colorado River Indian Irrigation Project	59
Electrical District No. 1	65
Arizona Power Pooling	68
Town of Wickenburg	70
Southern California Edison Company	74
Electrical District No. 6	120
Electrical District No. 7	126
City of Page	128
Electrical District No. 8	134
Aguila Irrigation District	140
McMullen Valley Water Conservation and Drainage District	141
Tonopah Irrigation District	142
Citizens Utilities Company	143
Harquahala Valley Power District ...	207
Buckeye Water Conservation and Drainage District	153
Roosevelt Irrigation District	155
Maricopa County Municipal Water Conservation District	158
City of Williams	168
San Carlos Indian Irrigation Project	192
Maricopa County Municipal Water Conservation District at Lake Pleasant	201
	209

Comment Date: November 21, 2002.

4. Carolina Power & Light Company

[Docket No. ER00-3435-005]

Take notice that on October 31, 2002, Progress Energy, Inc. (Progress Energy) on behalf of Carolina Power & Light Company (CP&L) and Florida Power Corporation (FPC) tendered for filing a revision to CP&L's generator interconnection procedures (Interconnection Procedures) in compliance with the Commission's Order issued in this docket on August 2, 2002.

Progress Energy respectfully requests that the revision to CP&L's Interconnection Procedures become effective November 1, 2002, the day after filing.

Comment Date: November 21, 2002.

5. Otter Tail Power Company

[Docket Nos. ER02-912-005; ER02-1728-001; ER02-1729-001; ER02-1730-002; ER02-1732-001]

Take notice that on October 31, 2002, Otter Tail Power Company submitted the compliance filing required by the Commission's July 5, 2002, order in consolidated Docket Nos. ER02-912-000; ER02-912-001; ER02-1728-000;

ER02-1729-000; ER02-1730-000; and ER02-1732-000. Copies of this filing were served on all parties included on the Commission's official service list established in this proceeding.

Comment Date: November 21, 2002.

6. Duke Energy Corporation

[Docket No.ER02-994-003]

Take notice that on October 31, 2002, Duke Energy Corporation (Duke), on behalf of Duke Electric Transmission (Duke ET), tendered for filing (i) a Generation Interconnection and Operating Agreement between Duke ET and South Carolina Public Service Authority (SCPSA), and (ii) an Amendment to the Restated Interchange Agreement between Duke Power Company and SCPSA dated February 10, 1992. Duke requests an effective date of January 1, 2003.

Comment Date: November 21, 2002.

7. The GridAmerica Participants

[Docket No. ER02-2233-001]

Take notice that on November 1, 2002, the GridAmerica Participants (Ameren Services Company, acting as agent for its electric utility affiliates Union Electric Company d/b/a AmerenUE and Central Illinois Public Service Company d/b/a/ AmerenCIPS, FirstEnergy Corp., on behalf of its subsidiary American Transmission Systems, Inc., Northern Indiana Public Service Company, and National Grid USA) and the Midwest Independent Transportation System Operator, Inc. (Midwest ISO) (collectively, the parties) submitted for filing in compliance with the Commission's July 31, 2002, order in the above-captioned proceeding, 100 FERC ¶61,135, an executed appendix I ITC Agreement between the GridAmerica LLC and the Midwest ISO.

In addition, the GridAmerica Parties submitted the definitive agreements necessary for the formation and operation of GridAmerica as an independent transmission company within the Midwest ISO. These agreements are the LLC Agreement, the Operation Agreement, and the Master Agreement. The LLC Agreement sets forth the governance and financing of GridAmerica, including the rights and obligations of its managing member, an affiliate of National Grid. The Master Agreement sets forth the steps that must be completed to reach the transmission service date as well as the rights and obligations of the parties concerning divestiture of transmission facilities to the ITC. The Operation Agreement contains the terms and conditions on which the Company will manage GridAmerica transmission facilities.

In order for GridAmerica to become operational during April 2003, the parties request that, by December 31, 2002, the Commission issue an order approving the filing and granting all necessary authorizations for the formation and operation of GridAmerica, including the transfer of functional control as provided in the agreements, and that the Commission set November 22, 2002, as the date for comments on the filings. The parties state that they are serving copies of the filing on the parties to the above-referenced proceeding in accordance with the requirements of section 385.2010 of the Commission's regulations, 18 CFR 285.2010 and serving the filing by email on the parties on the Midwest ISO's extensive email service list.

Comment Date: November 20, 2002.

8. Nevada Power Company

[Docket No. ER03-89-000]

Take notice that on October 31, 2002, Nevada Power Company, tendered for filing pursuant to section 205 of the Federal Power Act, an executed Service Agreement for Network Integration Transmission Service (Service Agreement) between Nevada Power Company and the City of Needles, California. The Service Agreement is being filed as Service Agreement No. 136 under Sierra Pacific Resources Operating Companies' FERC Electric Tariff, First Revised Volume No. 1.

Nevada Power Company has requested that the Commission accept the Service Agreement and permit service in accordance therewith effective October 1, 2002.

Comment Date: November 21, 2002.

9. Southern California Edison Company

[Docket No. ER03-103-000]

Take notice that on October 31, 2002, Southern California Edison Company stated that effective the first day of January 2003, rate schedule FERC nos. 368, 369 and 370 effective August 1, 1990, January 1, 1995, and April 1, 1998, respectively, and filed with the Federal Energy Regulatory Commission by Southern California Edison Company, are to be canceled.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and the City of Anaheim, California.

Comment Date: November 21, 2002.

10. Southern California Edison Company

[Docket No. ER03-104-000]

Take notice that on October 31, 2002, Southern California Edison Company,

stated that effective the first day of January 2003, rate schedule FERC Nos. 395, 396, 397, 398, 399 and 400 effective December 29, 1992, May 1, 1995, April 30, 1996, June 1, 1996, June 1, 1996 and July 16, 1996, respectively, and filed with the Federal Energy Regulatory Commission by Southern California Edison Company, are to be canceled.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and the City of Riverside, California.

Comment Date: November 21, 2002.

11. Public Service Electric and Gas Company

[Docket No. ER03-105-000]

Take notice that on October 31, 2002, Public Service Electric and Gas Company (PSE&G) submitted for filing a revised Interconnection Agreement, reflecting revisions to an existing Interconnection Agreement dated August 2000 between PSE&G and the Joint Owners of the Hope Creek Generating Station and Switchyard. Copies of this filing were served on the Joint Owners and on PJM Interconnection, L.L.C.

Comment Date: November 21, 2002.

12. Virginia Electric and Power Company

[Docket No. ER03-106-000]

Take notice that on October 31, 2002, Virginia Electric and Power Company (the Dominion Virginia Power or Company) respectfully tendered for filing an amendment to its Wholesale Cost-Based Rate Tariff. Dominion seeks an effective date of January 1, 2003, which is sixty 60 days after the date of this filing.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, and all customers under the wholesale cost based tariff.

Comment Date: November 21, 2002.

13. CP Power Sales Five, L.L.C.

[Docket No. ER03-107-000]

Take notice that on October 31, 2002, CP Power Sales Five, L.L.C., tendered for filing a Notice of Cancellation of its authorization to engage in wholesale electric energy transactions at market-based rates, filed on April 10, 1995.

Comment Date: November 21, 2002.

14. CP Power Sales Thirteen, L.L.C.

[Docket No. ER03-108-000]

Take notice that on October 31, 2002, CP Power Sales Thirteen, L.L.C., tendered for filing a Notice of Cancellation of its authorization to

engage in wholesale electric energy transactions at market-based rates, filed on December 11, 1998.

Comment Date: November 21, 2002.

15. CP Power Sales Fourteen, L.L.C.

[Docket No. ER03-109-000]

Take notice that on October 31, 2002, CP Power Sales Fourteen, L.L.C., tendered for filing a Notice of Cancellation of its authorization to engage in wholesale electric energy transactions at market-based rates, filed on December 11, 1998.

Comment Date: November 21, 2002.

16. CP Power Sales Fifteen, L.L.C.

[Docket No. ER03-110-000]

Take notice that on October 31, 2002, CP Power Sales Fifteen, L.L.C., tendered for filing a Notice of Cancellation of its authorization to engage in wholesale electric energy transactions at market-based rates, filed on December 11, 1998.

Comment Date: November 21, 2002.

Standard Paragraph

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.

Magalie R. Salas,

Secretary.

[FR Doc. 02-28889 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. EL03-23-000, et al.]

Pacer Power LLC, et al.; Electric Rate and Corporate Filings

November 6, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Pacer Power LLC

[Docket No. EL03-23-000]

Take notice that on October 31, 2002, Pacer Power LLC (Pacer) filed with the Federal Energy Regulatory Commission (Commission) a petition for a declaratory order requesting the Commission disclaim jurisdiction over Pacer based on Pacer's status as a power broker. Pacer requests that the Commission act on the petition by the Commission's first January meeting date.

Comment Date: December 5, 2002.

2. ISO New England Inc.

[Docket No. ER01-316-007]

Take notice that on October 31, 2002, ISO New England, Inc., filed its Index of Customers for the third quarter of 2002 for its Tariff for Transmission Dispatch and Power Administration Services in compliance with Order No. 614.

Comment Date: November 21, 2002.

3. California Independent System Operator Corporation

[Docket No. ER03-111-000]

Take notice that on October 31, 2002, the California Independent System Operator Corporation (ISO) submitted for Commission filing and acceptance the Utility Distribution Company Operating Agreement (UDC Operating Agreement) between the ISO and the City of Azusa, California. The ISO requests that the UDC Operating Agreement be made effective as of January 1, 2003. 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 Azusa, California and the Public Utilities Commission of the State of California.

Comment Date: November 21, 2002.

4. New York Independent System Operator, Inc.

[Docket No. ER03-112-000]

Take notice that on October 31, 2002, the New York System Operator, Inc.

(NYISO) tendered for filing proposed revisions to its Market Administration and Control Area Services Tariff (Services Tariff) designed to extend the current methodology and rate used to calculate payments for Voltage Support Service through the end of calendar year 2003. The NYISO has requested that the Commission make the filing effective on January 1, 2003.

The NYISO has served a copy of this filing on all persons that have executed Service Agreements under the NYISO Services Tariff or the NYISO Open Access Transmission Tariff, on the New York Public Service Commission, and on the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: November 21, 2002.

5. Idaho Power Company

[Docket No. ER03-113-000]

Take notice that on October 31, 2002, Idaho Power Company filed a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and Pinnacle West Capital Corporation under its open access transmission tariff in the above-captioned proceeding.

Comment Date: November 21, 2002.

6. Great Bay Power Marketing, Inc.

[Docket No. ER03-114-000]

Take notice that on October 31, 2002, Great Bay Power Marketing, Inc. (GBPM) tendered for filing with the Federal Energy Regulatory Commission (Commission), an application for authority to sell electric energy, capacity and certain ancillary services at market-based rates under section 205(a) of the Federal Power Act, 16 U.S.C. 824d(a), and accompanying requests for certain blanket approvals and for the waiver of certain Commission regulations. GBPM requests that the Commission accept its Original Rate Schedule FERC No. 1 for filing.

Comment Date: November 21, 2002.

7. PJM Interconnection, LLC

[Docket No. ER03-115-000]

Take notice that on October 31, 2002, PJM Interconnection, LLC (PJM), submitted for filing an executed interconnection service agreement between PJM and Ocean Peaking Power, LP n/k/a Surfside Funding, Limited Partnership (Ocean Peaking/Surfside Funding).

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by Surfside and PJM. Copies of this filing were served upon Ocean Peaking/Surfside Funding c/o

Consolidated Edison Development, Inc. and the state regulatory commissions within the PJM region.

Comment Date: November 21, 2002.

8. Duke Energy Oakland, LLC

[Docket No. ER03-116-000]

Take notice that on October 31, 2002, pursuant to 16 U.S.C. 824d, and 18 CFR 35.13, Duke Energy Oakland, LLC (DEO) tendered for filing certain revisions to rate schedules A, B, and D of its RMR agreement with the California Independent System Operator (CAISO). DEO also tendered in the same submission an informational filing detailing and supporting the proposed changes to its Annual Fixed Revenue Requirement (AFRR) and Variable O&M Rate (VO&M), pursuant to schedule F of its RMR agreement.

DEO requests an effective date of January 1, 2003, for these revisions. Copies of the filing have been served upon the CAISO, Pacific Gas and Electric Company, the Public Utilities Commission of the State of California, and the Electricity Oversight Board of the State of California.

Comment Date: November 21, 2002.

9. Duke Energy South Bay, LLC

[Docket No. ER03-117-000]

Take notice that on October 31, 2002, pursuant to 16 U.S.C. 824d, and 18 CFR 35.13, Duke Energy South Bay, LLC (DESB) tendered for filing certain revisions to rate schedules A, B, and D of its RMR agreement with the California Independent System Operator (CAISO). DESB also tendered in the same submission an informational filing detailing and supporting the proposed changes to its Annual Fixed Revenue Requirement (AFRR) and Variable O&M Rate (VO&M), pursuant to schedule F of its RMR agreement.

DESB requests an effective date of January 1, 2003, for these revisions. Copies of the filing have been served upon the CAISO, San Diego Gas & Electric Company, the Public Utilities Commission of the State of California, and the Electricity Oversight Board of the State of California.

Comment Date: November 21, 2002

10. PJM Interconnection, LLC

[Docket No. ER03-118-000]

Take notice that on October 31, 2002, PJM Interconnection, LLC (PJM), filed amendments to schedule 9 of the PJM Open Access Transmission Tariff (PJM Tariff), the Reliability Assurance Agreement Among Load-Serving Entities in the PJM Control Area (RAA), and the Reliability Assurance Agreement Among Load-Serving g

Entitles in the PJM West Region (West RAA) to: (1) Eliminate the two schedules involving the smallest portion of PJM's costs, shifting those costs to other schedules; and (2) transfer PJM's costs for the Commission's part 382 annual charges from one of the existing schedules to a new schedule devoted solely to such annual charges.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region. PJM proposes an effective date of January 1, 2003, for the amendments.

Comment Date: November 21, 2002.

11. MDU Resources Group, Inc.

[Docket No. ES03-10-000]

Take notice that on October 30, 2002, MDU Resources Group, Inc. submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to incur short-term indebtedness in an amount not to exceed \$125 million.

Comment Date: November 27, 2002.

12. Oklahoma Gas and Electric Company

[Docket No. ES03-12-000]

Take notice that on October 31, 2002, Oklahoma Gas and Electric Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue not more than \$400,000,000 of short-term debt securities on or before December 31, 2004, with a final maturity date of December 31, 2005.

Comment Date: November 22, 2002.

Standard Paragraph

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 "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For

assistance, call (202) 502-8222 or TTY, (202) 502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 02-28770 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3516-008]

City of Hart, Michigan; Notice of Availability of Draft Environmental Assessment

November 6, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for minor license for the existing Hart Hydroelectric Project located on the South Branch of the Pentwater River in Oceana County, Michigan, and has prepared a Draft Environmental Assessment (DEA) for the project.

The DEA contains the staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the DEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 3516-008 to all comments. Comments may be filed electronically

via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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.

For further information, contact Steve Kartalia at (202) 502-6131 or by E-mail at stephen.kartalia@ferc.gov.

Magalie R. Salas,

Secretary.

[FR Doc. 02-28772 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 4, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Change Project Boundary.

b. *Project No.:* 2232-421.

c. *Date Filed:* March 9, 2001, and September 11, 2002.

d. *Applicant:* Duke Power Company.

e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* The Rocky Creek/Cedar Creek Development of the Catawba-Wateree project is located in Chester, Fairfield, and Lancaster Counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(TM)) and 799 and 801.

h. *Applicant Contact:* Jeff G. Lineberger, P.E. Manager, Hydro Licensing, Duke Power Company, 526 South Church Street, P. O. Box 1006, Charlotte, NC 28201-1006, (704) 382-5942.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Robert Shaffer at (202) 502-8944, or e-mail address: robert.shaffer@ferc.gov.

j. *Deadline for filing comments and or motions:* December 6, 2002.

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. Please include the project number (P-2232-421) on any comments or motions filed.

k. *Description of Request:* The licensee proposes to revise the project boundary to more accurately represent the authorized elevation of 284.4 feet for

the Rocky Creek/Cedar Creek reservoir level. The licensee states the existing boundary inaccurately shows the 284.4 foot full pond contour extending to the toe of the diversion dam for the upstream Great Falls/Dearborn Development.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the

• FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

q. *Comments, protests and interventions* may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.gov> under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02-28585 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 31, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application:* Preliminary Permit.
- b. *Project No.:* 12299-000.
- c. *Date filed:* July 5, 2002.
- d. *Applicant:* Clarence Cannon Hydro, LLC.
- e. *Name of Project:* Clarence Cannon Dam Project.
- f. *Location:* On the Salt River, in Ralls County, Missouri utilizing the Clarence Cannon Dam administered by the U.S. Army Corps of Engineers.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. "791(a)—825(r).
- h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208)745-0834.
- i. *FERC Contact:* Robert Bell, (202) 502-6062.
- j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date 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. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-12299-000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Clarence Cannon Dam and would consist of: (1) A proposed intake structure, (2) a proposed 200-foot-long, 144-inch-diameter steel penstock, (3) a proposed powerhouse containing two generating units having a total installed capacity of 25.5 MW, (4) a proposed 5-mile-long, 50 kV transmission line, and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 63 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at Clarence Cannon Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752-2580.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an

application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent— A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit— A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene— Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents— Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional

copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

s. Agency Comments— Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.M

[FR Doc. 02-28800 Filed 11-12-02; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2002-0004; FRL-7407-2]

Agency Information Collection Activities; Submission of EPA ICR No. 1188.07 (OMB No. 2070-0038) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: *Significant New Use Rules for Existing Chemicals—TSCA Section 5(a)* (EPA ICR No. 1188.07; OMB Control No. 2070-0038). The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. On April 16, 2002 (67 FR 18606), with a correction on May 15, 2002 (67 FR 34704), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the single comment it received.

DATES: Additional comments may be submitted on or before December 13, 2002.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director,

Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-554-1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. EPA has established a public docket for this ICR under docket ID No. OPPT-2002-0004, which is available for public viewing at the OPPT Docket in the EPA Docket Center, EPA West Building Basement Room B102, 1301 Constitution Ave., NW., Washington, DC. The Center is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets (EDOCKET) at <http://www.epa.gov/edocket>. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions:

(1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to oppt.ncic@epa.gov, or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mailcode: 7407M, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OPPT-2002-0004, and (2) Mail a copy of your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the

version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET.

Title: Significant New Use Rules for Existing Chemicals—TSCA Section 5(a) (EPA ICR No. 1188.07; OMB Control No. 2070-0038). This is a request to renew an existing approved collection that is scheduled to expire on November 30, 2002. Under 5 CFR 1320.10(e)(2), the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Section 5 of the Toxic Substances Control Act (TSCA) provides EPA with a regulatory mechanism to monitor and, if necessary, control significant new uses of chemical substances. Section 5 authorizes EPA to determine by rule (a significant new use rule or SNUR), after considering all relevant factors, that a use of a chemical substance represents a significant new use. If EPA determines that a use of a chemical substance is a significant new use, section 5 requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

EPA uses the information obtained through this collection to evaluate the health and environmental effects of the significant new use. EPA may take regulatory actions under TSCA sections 5, 6 or 7 to control the activities for which it has received a SNUR notice. These actions include orders to limit or prohibit the manufacture, importation, processing, distribution in commerce, use or disposal of chemical substances. If EPA does not take action, section 5 also requires EPA to publish a **Federal Register** notice explaining the reasons for not taking action.

Responses to the collection of information are mandatory (*see* 40 CFR part 721). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

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

and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting burden for this collection of information is estimated to be about 119 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers, processors, importers, or distributors in commerce of chemical substances or mixtures.

Frequency of Collection: On occasion.

Estimated No. of Respondents: 8.

Estimated Total Annual Burden on Respondents: 1,020 hours.

Estimated Total Annual Costs: \$84,306.

Changes in Burden Estimates: There is a decrease of 12 hours (from 1,032 hours to 1,020 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This change results from updating estimates based upon historical information on SNURs promulgated by the EPA (adjustment). Based upon revised estimates, the number of SNURs estimated to be received annually has increased from 3 to 5. Additionally, the estimated number of chemicals per SNUR has increased from 34 to 65.5. However, the estimated annual number of SNURs has decreased from 10 to 3 based upon historical information. A final change was the inclusion of burden hours to cover the time companies may use to verify that their chemicals are on the SNUR (adjustment). The changes result in an overall decrease in notification burden. The overall result of these adjustments is a decrease in estimated burden.

Dated: November 4, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02-28846 Filed 11-12-02; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7407-5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Tribal Lands Hazardous Waste Sites Census

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Tribal Lands Hazardous Waste Sites Census, EPA ICR Number 2059.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 13, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 2059.01 to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566-1672, by e-mail at Auby.Susan@epa.gov, or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 2059.01. For technical questions about the ICR contact Kirby Biggs, Office of Emergency and Remedial Response, U.S. EPA, Mail Code 5204G, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (703) 308-8506, e-mail: biggs.kirby@epa.gov.

SUPPLEMENTARY INFORMATION:

Title: Tribal Lands Hazardous Waste Sites Census (EPA ICR No. 2059.01). This is a new collection.

Abstract: EPA is conducting a study of potential hazards to Tribal communities from contaminated sites in or near Indian lands. EPA will conduct a voluntary census of all federally recognized tribes to identify known and potential Superfund sites (sites that fall under the Comprehensive

Environmental Response, Compensation and Liability Act, or CERCLA, as amended), abandoned or active industrial and municipal sites (sites regulated under the Resource Conservation and Recovery Act or RCRA), and federal sites (such as those operated by the Department of Defense or the Department of Energy) that may be impacting human health and the environment on Indian lands.

EPA has developed a draft list of sites that are believed to be in or near Indian lands. The study will be used to update and refine this draft list into a usable tool to assist EPA and tribal governments in responding to the needs of Tribes and in protecting human health and the environment. The survey will serve to inform EPA of the extent and location of sites potentially affecting Tribes and those sites that are of concern to the Tribes. The inventory of potential risks to Indian lands will provide EPA with vital information regarding program needs and potential risk to Indian tribes from these sites.

No confidentiality is provided and no sensitive information is expected to be collected under this ICR. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 1, 2002 (67 FR 4957). One comment was received that questioned the burden hours cited for the information collection as too low and requested a copy of the survey instrument. When a copy of the survey instrument was forwarded to the author of the comment, no further response was received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or

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

Respondents/Affected Entities: State, Local, and Tribal Government.

Estimated Number of Respondents: 550.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 1375 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: \$0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 2059.01 in any correspondence.

Dated: October 31, 2002.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. 02-28847 Filed 11-12-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7407-3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Notification of Regulated Waste Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Notification of Regulated Waste Activity, EPA ICR No. 0261.14, OMB No. 2050-0028, expires on December 31, 2002. The ICR describes

the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 13, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 0261.14 and OMB Control No. 2050-0028, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566-1672, by e-mail at auby.susan@epamail.epa.gov or download off the Internet at <http://www.epa.gov/icr> and refer to EPA ICR No. 0261.14. For technical questions about the ICR contact David Eberly at (703) 308-8645.

SUPPLEMENTARY INFORMATION:

Title: Notification of Regulated Waste Activity, EPA ICR No. 0261.14, OMB No. 2050-0028, expires on December 31, 2002. This is a request for extension of a currently approved collection.

Abstract: Section 3010 of Subtitle C of RCRA, as amended, requires any person who generates or transports regulated waste or who owns or operates a facility for the treatment, storage, or disposal (TSD) of regulated waste to notify EPA of their activities, including the location and general description of activities and the regulated wastes handled. The facility is then issued an EPA Identification number. The facilities are required to use the Notification Form (EPA Form 8700-12) to notify EPA of their hazardous waste activities. EPA needs this information to determine the universe of persons who generate, handle, and manage these regulated wastes; assign EPA Identification Numbers; and ensure that these regulated wastes are managed in a way that protects human health and the environment, as required by RCRA, as amended. EPA enters notification information submitted by respondents into the EPA National data base and assigns EPA Identification Numbers. EPA uses the information primarily for tracking purposes, and secondarily for a variety of enforcement and inspection purposes. In addition, EPA uses this information to identify the universe of regulated waste generators, handlers, and managers and their specific

regulated waste activities. Finally, EPA uses this information to ensure that regulated waste is managed properly, that statutory provisions are upheld, and that regulations are adhered to by facility owners or operators.

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which defines EPA's general policy on public disclosure of information, both contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the Notification of Regulated Waste Activity. If such a claim were asserted, EPA must and will treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on July 1, 2002 (67 FR 44196). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 4 hours per respondent for initial notifications and about 2 hours per respondent for subsequent notifications. The estimates for the notification ICR include all aspects of the information collection including time for reviewing instructions, searching existing data sources, gathering data, and completing and reviewing the form. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Business or other for profit.

Estimated Number of Respondents: 31,125.

Frequency of Response: On occasion.
Estimated Total Annual Hour Burden: 96,250 hours.

Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden: \$130,725.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses above. Please refer to EPA ICR No. 0261.14 and OMB Control No. 2050-0028 in any correspondence.

Dated: November 1, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02-28848 Filed 11-12-02; 8:45 am]

BILLING CODE 6560-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7407-4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS for Metal Coil Surface Coating

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: NSPS for Metal Coil Surface Coating (subpart TT), OMB Control Number 2060-0107, expiration date January 31, 2003. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 13, 2002.

ADDRESSES: Send comments, referencing EPA IRC Number 0660.08 and OMB Control Number 2060-0107, to the following addresses: Susan Auby, United State Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460-0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Susan Auby at EPA by phone at: (202) 566-1672, by e-Mail to: auby.susan@epa.gov, or download from the Internet at: <http://www.epa.gov/icr>, and refer to EPA ICR Number 0660.08. For technical questions about the ICR, contact Steven Hoover at (202) 564-7007, or by e-Mail to: hoover.steven@epa.gov.

SUPPLEMENTARY INFORMATION:

Title: NSPS for Metal Coil Surface Coating (subpart TT), OMB Control Number 2060-0107, EPA ICR Number 0660.08, expiration date January 31, 2003. This is a request for extension of a currently approved collection.

Abstract: The New Source Performance Standard (NSPS) for Surface Coating of Metal Coils were proposed on January 5, 1981, and promulgated on November 1, 1982. These standards apply to each metal coil surface coating operation in which organic coatings are applied that commenced construction, modification or reconstruction after January 5, 1981. Approximately 161 sources are currently subject to the standard, and it is estimated that 4 sources per year will become subject to the standard. Volatile Organic Compounds (VOCs) are the pollutants regulated under this subpart, and this information is being collected to assure compliance with 40 CFR part 60, subpart TT.

Owners or operators of the affected facilities described must make initial reports when a source becomes subject, conduct and report on a performance test, demonstrate and report on continuous monitor performance, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 2 years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed

in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 20, 2002. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 36 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Metal Coil Surface Coating Plants.

Estimated Number of Respondents: 165.

Frequency of Response: semiannual for all, every other year for excess emission report.

Estimated Total Annual Hour Burden: 14,531.

Estimated Total Annualized Capital, O&M Cost Burden: \$318,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR Number 0660.08 and OMB Control Number 2060-0107 in any correspondence.

Dated: November 4, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02-28849 Filed 11-2-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7407-9]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in *Utility Air Regulatory Group (UARG) v. Environmental Protection Agency (EPA)*, No. 02-1023 and consolidated cases (Nos. 02-1026, 02-1027, 02-1028, 02-1088)(D.C. Circuit). These consolidated cases concern a November 15, 2001 **Federal Register** notice entitled *Recent Posting of Agency Regulatory Interpretations Pertaining to Applicability and Monitoring for Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants to the Applicability Index (ADI) Database System*, (66 FR 57453) and a January 10, 2002 **Federal Register** notice entitled *Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants*, (67 FR 1295).

DATES: Written comments on the proposed settlement agreement must be received by December 13, 2002.

ADDRESSES: Written comments should be sent to Diane E. McConkey, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. A copy of the proposed settlement agreement is available from Phyllis J. Cochran, (202) 564-7606.

SUPPLEMENTARY INFORMATION: From time to time EPA publishes in the **Federal Register** notices of recent postings to the Applicability Determination Index Database System (ADI Posting Notices), similar to the two notices at issue in these petitions for review. The following entities filed petitions for review of one or both of the ADI Posting Notices described above: *Utility Air Regulatory Group (UARG)*, January 11, 2002 (November 15, 2001 notice) and *March 11, 2002 (January 10, 2002 notice); Clean Air Implementation Project (CAIP)*, January 14, 2002 (November 15, 2001 notice); *American Chemistry Council (ACC)*, January 14, 2002 (November 15, 2001 notice); *National Environmental Development Association's Clean Air Regulatory Project (NEDA/CARP)*, January 14, 2002 (November 15, 2001 and January 10, 2002 notices).

UARG, CAIP, ACC, NEDA/CARP, and EPA have now reached initial agreement on a settlement of the consolidated cases which could lead to the voluntary dismissal of the petitions for review. The settlement requires the EPA Administrator to include specific language in the first ADI Posting Notice signed after the settlement agreement is final and effective.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement.

EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: November 4, 2002.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 02-28843 Filed 11-12-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2002-0265; FRL-7280-8]

FIFRA Scientific Advisory Panel; Notice of Cancellation of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of October 10, 2002 (67 FR 63084) (FRL-7276-4), EPA announced a November 21, 2002, pre-meeting teleconference and a December 3-5, 2002, face-to-face meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review studies on water disinfection and softening as related to the Food Quality Protection Act (FQPA) drinking water exposure assessments. The meetings have been cancelled because of logistical problems. A new set of meetings will be announced in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Designated Federal Official (DFO), Office of Science Coordination

and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8450; fax number: (202) 564-8382; e-mail address: lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and FQPA. 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 DFO listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2002-0265. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 5, 2002.

Joseph J. Merenda, Jr.,

Director, Office of Science Coordination and Policy.

[FR Doc. 02-28841 Filed 11-12-02; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2002-0279; FRL-7277-2]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP-2002-0279, must be received on or before December 13, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6224; e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide

for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in unit II of this notice. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2002-0279. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing

in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you

wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2002-0279. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP-2002-0279. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic

submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2002-0279.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP-2002-0279. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File symbol:* 71771-T. *Applicant:* Nichino America, Inc., 4550 New Linden Hill Road, Wilmington, DE 19808. *Product name:* ET-751 2.5% EC Herbicide. *Product type:* Herbicide. *Active ingredient:* Pyraflufen-ethyl (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetate) at 2.5%. *Proposed classification/Use:* None. For use on terrestrial non-cropland to control broadleaf weeds.

2. *File symbol:* 71711-A. *Applicant:* Nichino America, Inc. *Product name:* ET-751 Technical. *Product type:* Herbicide. *Active ingredient:* Pyraflufen-ethyl at 97.9%. *Proposed classification/Use:* None. For manufacturing use of end-use products to be used to control certain broadleaf weeds on terrestrial non-cropland.

3. *File symbol:* 59639-RNO. *Applicant:* Valent U.S.A. Corporation, 1333 North Carolina Blvd., Suite 600, P.O. Box 8025, Walnut Creek, CA 94596-8025. *Product name:* S-3153 Flufenpyr-ethyl Technical. *Product type:* Herbicide. *Active ingredient:* Flufenpyr-ethyl, ethyl [2-chloro-4-fluoro-5-(5-methyl-6-oxo-4-trifluoromethyl-1,6-dihydropyridazin-1-yl)phenoxy]acetate at 98.0%. *Proposed classification/Use:* None. For formulation into herbicide products to control postemergence broadleaf weed species in field corn, forage; field corn,

grain; field corn, stover; soybean, seed; sugarcane.

4. *File symbol:* 59639-RRN.

Applicant: Valent U.S.A. Corporation. *Product name:* S-3153 WDG Herbicide. *Product type:* Herbicide. *Active ingredient:* Flufenpyr-ethyl at 57.6%. *Proposed classification/Use:* None. For manufacturing use of end-use products to be used to control postemergence broadleaf weed species in field corn, soybeans and sugarcane.

5. *File symbol:* 59639-RRR.

Applicant: Valent U.S.A. Corporation. *Product name:* S-3153 Atrazine WDG. *Product type:* Herbicide. *Active ingredient:* Flufenpyr-ethyl 75.0%. *Proposed classification/Use:* None. For manufacturing use of end-use products to be used to control postemergence broadleaf weed species in field corn and sugarcane.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: October 27, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02-28504 Filed 11-12-02; 8:45am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2002-0285; FRL-7278-1]

Draft Guidance on How to Comply with Data Citation Regulations; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of draft guidance on how to comply with the Agency's data citation requirements for registration of new pesticide products under the Federal Insecticide, Fungicide, and Rodenticide Act. When applicants do not fully comply with the data citation regulations, the result can be significant delays in the processing of registration applications, the potential for an increase in adversarial petitions being submitted to the Agency by data submitters, and increased expenditures of resources for all involved, the Agency, applicants, and data submitters. EPA believes that the guidance provided through the notice will assist applicants comply with the data citation requirements and ultimately result in fewer delays in the registration process.

DATES: Comments, identified by docket ID number OPP-2002-0285, must be received on or before December 13, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Peter Caulkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5447; fax number: (703) 305-6920; e-mail address: caulkins.peter@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you submit applications for registration of pesticides pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), or if you submit data to the Agency in support of registration or reregistration under FIFRA. Potentially affected entities may include, but are not limited to:

Pesticide Manufacturing (NAICS 32532)

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

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2002-0285. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that

is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgrstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide

a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit

comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2002-0285. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP-2002-0285. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2002-0285.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP-2002-0285. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then

identify electronically within the disk or CD ROM the specific information that is CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition, one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Action is the Agency Taking?

Applicants who choose to rely on data citation, rather than submitting their own data to meet EPA data requirements, must assure that the offer-to-pay letters they provide to data submitters satisfy EPA's regulatory requirements as provided in 40 CFR part 152, subpart E. When applicants do not follow these procedures, delays in the processing of registration applications result. In addition, improper offer-to-pay letters can increase the potential for adversarial petition actions brought under 40 CFR 152.99. When applicants do not comply with data citation

requirements, EPA, data submitters, and applicants expend, unnecessarily, significant resources during the application process. In an effort to avoid needless disputes and save the resources of all concerned, the Agency believes it would be helpful to clarify the obligations of data citers.

By providing this guidance, the Agency hopes to streamline the registration process, provide assistance to applicants for pesticide registration, and to help data submitters preserve their data protection rights.

The draft Pesticide Registration Notice does not address the issue of when offers-to-pay must be made or when documentation demonstrating that offers-to-pay have been made must be submitted to the Agency. EPA expects to issue guidance on this related matter through a separate means.

In addition, the Agency will soon make available to the public several letters that have been issued recently regarding data compensation matters. These letters provide useful guidance to the regulated community and the general public, including persons who prepare applications for registration and those who submit data in support of registration actions. The Agency intends to announce the availability of these letters through a separate notice in the **Federal Register**.

List of Subjects

Environmental protection, Administrative practice and procedures, Pesticides and pests.

Dated: November 1, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 02-28693 Filed 11-12-02; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7407-8]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act; Nazcon Concrete Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Nazcon Concrete Superfund Site, Beltsville, Prince

George's County, Maryland. The administrative settlement was signed by the Acting Regional Administrator of the United States Environmental Protection Agency (EPA), Region III, on October 31, 2002, and is subject to review by the public pursuant to this document.

The Environmental Protection Agency is proposing to enter into a settlement pursuant to section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(h). The proposed settlement resolves EPA's claim for past response costs under section 107 of CERCLA, 42 U.S.C. 9607 against NAZCON, Inc. for response costs incurred at the Nazcon Concrete Superfund Site, Beltsville, Prince George's County, Maryland. The proposed settlement requires NAZCON, Inc. to pay \$15,000 to the EPA Hazardous Substance Fund.

NAZCON, Inc., as the Settling Party, has executed binding certifications of its consent to participate in this settlement. NAZCON, Inc. has agreed to pay \$15,000 subject to the contingency that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this notice.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. EPA will consider all comments received and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before December 12, 2002.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, and should reference the Nazcon Concrete Superfund Site, Beltsville, Maryland, U.S. EPA Docket No. CERCLA 03-2002-0255-DC. The proposed settlement agreement is available for public inspection at the United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103. A copy of the proposed settlement agreement can be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, telephone number (215) 814-2476.

EPA's response to any written comments received will be available for public inspection at the United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Suzanne M. Parent, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Office of Regional Counsel (3RC44), 1650 Arch Street, Philadelphia, Pennsylvania, 19103, telephone number (215) 814-2630.

Dated: October 31, 2002.

James W. Newsom,

Acting Regional Administrator, U.S. EPA, Region III.

[FR Doc. 02-28842 Filed 11-12-02; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7407-7]

Supplemental Information and Extension of Public Comment Period on the General National Pollutant Discharge Elimination System Permits for Log Transfer Facilities in Alaska: AK-G70-0000 and AK-G70-1000

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment and request for additional public comments on general NPDES permits for log transfer facilities in Alaska.

SUMMARY: The Director, Office of Water, EPA Region 10, is extending the comment period on proposed modifications of the two general National Pollutant Discharge Elimination System (NPDES) permits for Alaskan log transfer facilities (LTFs), inconclusive of log storage areas: NPDES permit numbers AK-G70-0000 and AK-G70-1000. In addition, EPA Region 10 is providing clarification on an element in the proposed modifications dealing with bark deposition and application of a Zone of Deposit. Notice of a public comment period on the project area zone of deposit for bark and woody debris, and proposed modifications of the NPDES permits was published in the **Federal Register** on October 22, 2002, 67 FR 64885. Region 10 is extending the public comment period to January 13, 2002.

DATES: Interested persons may submit written comments on the proposed modifications to general NPDES permits AK-G70-0000 and AK-G70-1000 and

on the project area zone of deposit on or before January 13, 2002.

ADDRESSES: Comments must be sent to the attention of Alaskan LTF Public Comments, EPA Region 10 (OW-130), 1200 Sixth Avenue, Seattle, WA 98101. All comments should include the name of the commenter, a concise statement of the comment, and the relevant facts upon which the comment is based.

FOR FURTHER INFORMATION CONTACT: The NPDES Permits Unit, EPA Region 10 Office of Water, Seattle, Washington, at (206) 553-0775.

SUPPLEMENTARY INFORMATION: The EPA published the public notice of its request for comment on the "project area zone of deposit" for LTFs and its proposed modification of two general permits for Alaskan log transfer facilities on October 22, 2002 (67 FR 64885). The October 22, 2002 **Federal Register** Notice announced a 60-day public comment period ending on December 23, 2002. The EPA did not, however, post the administrative record on the internet, provide copies of the record at its listed offices, nor distribute copies of the public notice and draft modified general permits to permittees and other interested parties in a timely fashion. Therefore, the EPA has determined to extend the public comment period to provide for sixty (60) days of comment following this present re-notice of public comment and proposed permit modification.

In addition to extending the comment period, the EPA seeks to clarify the October 22 **Federal Register** Notice (67 FR 64885) in regard to issues associated with the regulation of continuous coverage of bark and woody debris inside of the project area zone of deposit authorized by the State of Alaska Department of Environmental Conservation (ADEC). The EPA asks that commenters provide comment on the practical, technical, economic, environmental and legal considerations regarding one of two alternative permit conditions to address the physical and environmental impacts associated with continuous coverage of the seafloor by bark and woody debris that is discharged from LTFs. The two alternatives being considered by EPA are: (1) A 1 acre threshold on continuous bark coverage that, once exceeded, would require the development and implementation of a remediation plan overseen by ADEC; or (2) a 1 acre *limit* on continuous bark coverage in the two general NPDES permits, which if exceeded, would be a violation of the permit.

The first alternative is to provide a *threshold* of 1 acre of continuous bark

coverage that would serve as an area of initiation for the development and implementation of a *remediation* plan to control and reduce the deposition of additional bark and woody debris that might contribute to the continuous coverage of additional area of seafloor in excess of 1 acre. The 1 acre *threshold for remediation* was provided by the ADEC in its certification of reasonable assurance that the general NPDES permits would meet the Alaska Water Quality Standards pursuant to Section 401 of the Clean Water Act. The ADEC has indicated that the 1 acre threshold was established in the Timber Task Force Guidelines and was meant to be a threshold for regulatory discretion to determine if cleanup was required, but was not intended to be a legal limit in a NPDES permit. Specifically, from Alaska Timber Task Force's (1985), Log transfer facility siting, construction, operations and monitoring/reporting guidelines (p. 11, section C6): "*Bark accumulation:* The regulatory agency(ies) will impose an interim intertidal and submarine threshold bark accumulation level. When accumulations exceed the threshold level, cleanup—if any—will occur at the discretion of the permitting agency(ies). The interim threshold bark accumulation level is described as 100% coverage exceeding both 1 acre in size and a thickness greater than 10 cm (3.9 inches) at any point."

The second alternative is to provide a limit of 1 acre of continuous bark coverage no deeper than 10 centimeters at any point that would serve as a maximum area of coverage under the NPDES permit. The 1 acre *limit of maximum continuous coverage* was provided by the EPA in its proposed modification of the two general permits on October 22, 2002, based on information developed by the Timber Task Force Guidelines on the impacts of discharges of bark and woody debris and previous ADEC Section 401 Certifications. Please refer to the October 22, 2002 **Federal Register** Notice (67 FR 64885) for a more detailed discussion of the alternatives for controlling continuous coverage of the seafloor by bark and woody debris from LTFs.

The EPA also draws attention to an issue of the appropriate precision used in the term "1 acre." The EPA's present October 22, 2002 **Federal Register** Notice uses the value "1.0 acre," a more precise definition of the exact extent of bark coverage. The EPA asks for additional comment on which of these approaches to measurement precision is best.

Administrative Record: The two draft general NPDES permit nos. AK-G70-0000 and AK-G70-1000, the October 22, 2002, **Federal Register** Notice, and this **Federal Register** Notice are available for inspection and copying at six locations: (a) EPA-Juneau, 709 West 9th Street, Room 223A; (b) ADEC-Juneau, 410 Willoughby Avenue, Suite 200; (c) EPA-Anchorage, 222 West 7th Avenue, Room 19; (d) ADEC-Anchorage, 555 Cordova Street; (e) ADEC-Ketchikan, 540 Water Street; and (f) EPA-Seattle, 1200 Sixth Avenue, 10th Floor Library. These documents are also available on EPA Region 10's internet site at <http://www.epa.gov/r10earth/>. The administrative record for the proposed modifications reflected in the draft general NPDES permits AK-G70-0000 and AK-G70-1000 and the project area zone of deposit can be reviewed in the EPA's Seattle Office, 1200 Sixth Avenue, 13th Floor.

Dated: November 1, 2002.

Randall F. Smith,

Director, Office of Water, Region 10.

[FR Doc. 02-28850 Filed 11-12-02; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 5, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of

information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 13, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1-C804 or Room 1-A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202-418-0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: OMB Control No.: 3060-0106.

Title: Section 43.61, Reports of Overseas Telecommunications Traffic.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 704.

Estimated Time Per Response: 2-240 hours.

Frequency of Response: Annual and quarterly reporting requirements.

Total Annual Burden: 18,520 hours.

Total Annual Cost: \$518,000.

Needs and Uses: The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The reported data is useful for international planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. The reported data enables the Commission to fulfill its regulatory responsibilities.

OMB Control No.: 3060-0806.

Title: Universal Service—Schools and Libraries Universal Service.

Form Nos.: FCC Forms 470 and 471.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 60,000.

Estimated Time Per Response: 4.5 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping

requirements, and third party disclosure requirement.

Total Annual Burden: 440,000 hours.

Total Annual Cost: N/A.

Needs and Uses: Schools and libraries ordering telecommunications services, Internet access, and internal connections under the universal service discount program must submit a description of the services desired to the Administrator. Schools and libraries may use the same description they use to meet the requirement that they generally face to solicit competitive bids. The FCC Form 470 is used to order those services. The FCC Form 471 requires schools and libraries to list all services that have been ordered and the funding needs for the current funding year. The Commission has modified FCC Form 471 to clarify instructions and specify requirements to participate in the schools and libraries universal service program.

OMB Control No.: 3060-0848.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,750.

Estimated Time Per Response: .50-44 hours.

Frequency of Response: On occasion and annual reporting requirements, recordkeeping requirement, third party disclosure requirement.

Total Annual Burden: 165,600 hours.

Total Annual Cost: \$61,200.

Needs and Uses: In the Collection Remand Order, CC Docket No. 98-147, the Commission requires that incumbent local exchange carriers providing cross-connects, pursuant to section 201 of the Communications Act of 1934, as amended, must include this offering as part of their federal tariffs as required by section 203(a) of the Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02-28810 Filed 11-12-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1437-DR]

Louisiana; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana, (FEMA-1437-DR), dated October 3, 2002, and related determinations.

EFFECTIVE DATE: October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Magda.Ruiz@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 3, 2002: Grant Parish for Individual Assistance. La Salle and Ouachita Parishes for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02-28754 Filed 11-12-02; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1436-DR]

Mississippi; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi, (FEMA-1436-DR), dated October 1, 2002, and related determinations.

EFFECTIVE DATE: October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705 or Magda.Ruiz@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 1, 2002: Copiah, George, and Greene Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02-28753 Filed 11-12-02; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL MARITIME COMMISSION

[Docket No. 02-16]

Golden Bridge International Inc.; Possible Violations of Sections 10(a)(1), 10(b)(2) and 19(a) of the Shipping Act of 1984; Notice of Investigation and Hearing

Notice is given that the Federal Maritime Commission ("Commission") served an Order of Investigation and Hearing on Golden Bridge International Inc. ("Golden Bridge") on November 6, 2002.

Golden Bridge is licensed by the Commission as an ocean transportation intermediary ("OTI"), and currently holds itself out as a non-vessel-operating common carrier ("NVOCC"). It appears that Golden Bridge may have obtained transportation for certain NVOCC cargoes which it misdescribed as to the commodity actually being shipped, resulting in it obtaining lower rates for its shipments than those rates and charges set forth in the applicable service contracts. It also appears that, on many shipments, Golden Bridge issued its own NVOCC bill of lading for shipments in which it acted as a common carrier in relation to its NVOCC customers, and charged and collected payment on the basis of the inaccurate or unpublished rates shown on its invoice issued at destination. It also appears that a large number of import shipments by Golden Bridge

were transported prior to the time it had an effective OTI license or tariff rates for its NVOCC services.

This proceeding seeks to determine whether Golden Bridge violated sections 10(a)(1), 10(b)(2) or 19(a) of the Shipping Act of 1984 and, in the event violations are found, whether penalties should be assessed and, if so, in what amount; whether Golden Bridge's tariff(s) should be suspended; whether Golden Bridge's OTI license should be suspended or revoked; and whether a cease and desist order should be issued.

Any person having an interest in participating in this proceeding may a file petition for leave to intervene in accordance with Rule 72 of the Commission's rules of practice and procedure, 46 CFR 502.72.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02-28756 Filed 11-12-02; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 27, 2002.

A. Federal Reserve Bank of Cleveland
(Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Terry E. Forcht*, Corbin, Kentucky; *Marion C. Forcht*, Corbin, Kentucky; *Theodore B. Forcht*, Corbin, Kentucky; *Rodney S. Shockley*, Marietta, Georgia; and *Laurie S. Forcht-Shockley*, Marietta, Georgia, also known as the Forcht Family Control Group; to acquire voting shares of Laurel Bancorp, Inc., Corbin, Kentucky, and thereby indirectly acquire voting shares of Laurel National Bank, London, Kentucky.

2. *Terry E. Forcht*, Corbin, Kentucky; *Marion C. Forcht*, Corbin, Kentucky;

Theodore B. Forcht, Corbin, Kentucky; Rodney S. Shockley, Marietta, Georgia; and Laurie S. Forcht-Shockley, Marietta, Georgia, also known as the Forcht Family Control Group; to acquire voting shares of Williamsburg Bancorp, Inc., Corbin, Kentucky, and thereby indirectly acquire voting shares of Williamsburg National Bank, Williamsburg, Kentucky.

3. *Terry E. Forcht*, Corbin, Kentucky; Marion C. Forcht, Corbin, Kentucky; Theodore B. Forcht, Corbin, Kentucky; Rodney S. Shockley, Marietta, Georgia; and Laurie S. Forcht-Shockley, Marietta, Georgia, also known as the Forcht Family Control Group; to acquire voting shares of Tri-County Bancorp, Inc., Corbin, Kentucky, and thereby indirectly acquire voting shares of Tri-County National Bank, Corbin, Kentucky.

4. *Terry E. Forcht*, Corbin, Kentucky; Marion C. Forcht, Corbin, Kentucky; Theodore B. Forcht, Corbin, Kentucky; Rodney S. Shockley, Marietta, Georgia; and Laurie S. Forcht-Shockley, Marietta, Georgia, also known as the Forcht Family Control Group; to acquire voting shares of Somerset Bancorp, Inc., Corbin, Kentucky, and thereby indirectly acquire voting shares of Somerset National Bank, Somerset, Kentucky.

Board of Governors of the Federal Reserve System, November 7, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-28839 Filed 11-12-02; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in

writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *Munchener Ruckversicherungs-Gesellschaft Aktiengesellschaft*, Munich, Germany; to retain 10.4 percent of the voting shares of Commerzbank AG, and thereby indirectly retain 10.4 percent of the voting shares of Pacific Union Bank, Los Angeles, California.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Ambanc Financial Services, Inc.*, Beaver Dam, Wisconsin; to acquire 100 percent of the voting shares of Central Lakes Bancorporation, Inc., Necedah, Wisconsin, and thereby indirectly acquire voting shares of Necedah Bank, Necedah, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *Marshfield Investment Company Employee Stock Ownership Plan Trust*, Springfield, Missouri; to become a bank holding company by acquiring 30 percent of the voting shares of Marshfield Investment Company, Springfield, Missouri; Metropolitan National Bank, Springfield, Missouri; First National Bank, Lamar, Missouri; and Bank of Kimberling City, Kimberling City, Missouri.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Maedgen & White, Ltd.*, Dallas, Texas, and Plains Capital Corporation, Dallas, Texas; to merge with Independent Financial, Inc., Lubbock, Texas, and thereby indirectly acquire Whisperwood National Bank, Lubbock, Texas.

Board of Governors of the Federal Reserve System, November 7, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-28840 Filed 11-12-02; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, November 18, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

- Proposals regarding a Federal Reserve Bank's building program.
- Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
- 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: November 8, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02-28944 Filed 11-8-02; 3:00 pm]

BILLING CODE 6210-01-P

GENERAL SERVICES ADMINISTRATION

Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: General Services Administration; National Capital Region.

ACTION: Notice

SUMMARY: The General Services Administration (GSA), National Capital

Region, intends to prepare an Environmental Impact Statement (EIS) for the Development of the Southeast Federal Center, Washington, DC.

The purpose of the proposed action is to enhance the value of the SEFC to the United States by realizing the Southeast Federal Center's potential and putting the site into productive reuse. Development is anticipated to be by transfer to the private sector in accordance with the SEFC Act. GSA envisions the development of a vibrant, urban, mixed-used waterfront destination, offering a combination of uses—commercial, residential, retail, and cultural—that will attract office workers, residents, and visitors from across the District and beyond.

FOR FURTHER INFORMATION CONTACT:

Patricia Daniels, Project Executive, General Services Administration, National Capital Region at (202) 205-5857. Please also call this number if special assistance is needed to attend and participate in the scoping meeting.

SUPPLEMENTARY INFORMATION: The notice of intent is as follows:

Notice of Intent To Prepare an Environmental Impact Statement for the Development of the Southeast Federal Center, Washington, DC

Pursuant to the requirements of the *National Environmental Policy Act of 1969* (NEPA), the Council on Environmental Quality's Regulations (40 CFR part 1500-1508), and GSA Order PBS P1095.1F (Environmental Considerations in Decision Making, dated October 19, 1999), GSA proposes to prepare an EIS for the development of the Southeast Federal Center (SEFC)—a 44-acre underdeveloped, urban waterfront site in Washington, DC—in response to the *Southeast Federal Center Public-Private Development Act of 2000* (Public Law 106-407, hereafter "the SEFC Act"). Not included in the 44 acres and not a part of this proposed action are 11 acres being developed separately as the site of the new U.S. Department of Transportation (DOT) Headquarters. The need for the proposed action arises because the SEFC—once an industrial area within the Washington Navy Yard—is underutilized. Its size and location in the heart of a neighborhood currently undergoing social and economic revitalization clearly indicate that it has great potential to become a unique waterfront destination with natural beauty, historic character (the site is eligible for historic district status), and quality architecture and urban design.

The purpose of the proposed action is to enhance the value of the SEFC to the United States by realizing the SEFC's potential and putting the site into productive reuse. Development is anticipated to be by transfer to the private sector in accordance with the SEFC Act. GSA envisions the development of a vibrant, urban, mixed-used waterfront destination, offering a combination of uses—commercial, residential, retail, and cultural—that will attract office workers, residents, and visitors from across the District and beyond.

In accordance with the SEFC Act, GSA intends to work with the private sector to develop a visionary, yet achievable, long-term development strategy for the site. To this end, GSA developed a Draft Illustrative Plan to provide a framework for the creation of a land use strategy for the SEFC. GSA issued a Request for Qualifications (RFQ) from developers interested in developing the site using the Draft Illustrative Plan as a guide. GSA did not seek specific development proposals in response to the RFQ. The agency's primary objective at that stage was to assess the quality and capabilities of potential developers. The FRQ will be followed by the issuance of a Request for Proposals (RFP) that will seek detailed proposals by qualified developers.

GSA will integrate NEPA compliance with the development and procurement processes during the preparation of the EIS. The draft EIS will be prepared using the combination of the Draft Illustrative Plan, developers' responses to the RFQ, and the NEPA public scoping process to determine the reasonable range of alternatives.

Alternatives Under Consideration

A preliminary group of development alternatives for the SEFC site that would be evaluated in the EIS has been developed by GSA, pending comment received during scoping and responses to the RFQ from potential developers. The alternatives generally follow a logical location preference of commercial/retail development on M Street and the west side of the site and residential/cultural development along the Anacostia River and the east side of the site:

Alternative 1. Maximum commercial and retail with minimum residential and cultural land uses. The potential buildout would be 1.8 million square feet (SF) commercial, 1,700 residential units (1.8 million SF), 350,000 SF retail, and 20,000 SF cultural.

Alternative 2. Maximum residential and cultural with minimum commercial

and retail land uses. The potential build out would be 1.2 million SF commercial, 2,700 residential units (2.9 million SF), 160,000 SF retail, and 100,000 SF cultural

Alternative 3. Maximum commercial and retail uses with minimum residential and cultural land uses, but arrayed differently on the site than under Alternative 1. The potential build out would be 1.8 million SF commercial, 1,700 residential units (1.8 million SF), 350,000 SF retail, and 20,000 SF cultural.

Alternative 4. Maximum residential and cultural with minimum commercial and retail land uses, but arrayed differently on the site than under Alternative 2. The potential build out would be 1.2 million SF commercial, 2,700 residential units (2.9 million SF), 160,000 SF retail, and 100,000 SF cultural.

Alternative 5. Maximum square footage of all four land uses: 1.8 million SF commercial, 2,700 residential units (2.9 million SF), 350,000 SF retail, and 100,000 SF cultural.

No Build Alternative. No development under this proposed action with new commercial, retail, residential, or cultural land uses would occur on the 44-acre portion of the SEFC.

GSA anticipates that the following categories of impacts will be addressed in the EIS: Land use, economic, community, environmental justice, transportation system, air quality, noise, hazardous waste, cultural resources, and natural systems. The EIS will also address methods to mitigate any significant impacts. GSA will comply with its obligations under section 106 of the National Historic Preservation Act to identify potential impacts to cultural resources on the SEFC site. Comments received during scoping may result in consideration of additional issues.

Scoping Process

In accordance with NEPA, a scoping process will be conducted to aid in determining the scope of issues to be addressed and for identifying the significant issues related to development of the SEFC. Scoping will be accomplished through a public scoping meeting, direct mail correspondence to potentially interested persons, agencies, and organizations, and meetings with agencies with an interest in the development of the SEFC. It is important that federal, regional, state, and local agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the Draft EIS.

Public Scoping Meeting

The public scoping meeting will be held at Van Ness Elementary School, 1150 5th St., SE., Washington, DC on December 3, 2002, from 6 to 8:30 pm. The meeting will be an informal open house, where visitors may come, receive information, discuss the proposal with study team members, give their comments, and leave anytime during the meeting period. GSA will publish notices announcing this meeting approximately two weeks prior to the meeting in the *Washington Post*, the *Washington Times*, and appropriate neighborhood newspapers, and through direct mailing to local and community organizations. GSA will prepare a scoping report, available to the public, that will summarize the comments received and facilitate their incorporation into the EIS process.

Throughout the EIS process, information on the project and its progress may be found on the GSA website: <http://www.gsa.gov/southeastfederalcenter>

Written Comments: Agencies and the public are encouraged to provide written comments on the scoping issues in addition to or in lieu of giving their comments at the public scoping meeting. Written comments regarding the environmental analysis for the development of the SEFC must be postmarked no later than December 17, 2002 and sent to the following address: General Services Administration, Attention: Patricia Daniels, Project Executive, 7th & D Streets, SW., Suite 2002, Washington, DC 20407.

Scoping Meeting Place

The meeting will be held at the following address: Van Ness Elementary School, 1150 5th St., SE., Washington, DC.

Date: December 3, 2002.

Time: 6 pm to 8:30 pm.

FOR FURTHER INFORMATION CONTACT:

Patricia Daniels, Project Executive, General Services Administration, National Capital Region, (202) 205-5857. Please also call this number if special assistance is needed to participate in the scoping meeting.

Dated: November 5, 2002.

Donald C. Williams,

Regional Administrator, National Capital Region, General Services Administration.

[FR Doc. 02-28838 Filed 11-12-02; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

White House Initiative on Asian Americans and Pacific Islanders President's Advisory Commission; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to conduct a public meeting during the month of October 2002.

Name: President's Advisory Commission on Asian Americans and Pacific Islanders (Commission).

Date and Time: Friday, November 22, 2002; 10 a.m.-5 p.m. EST.

Location: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

The meeting is open to the public.

The President's Advisory Commission on AAPIs will conduct a public meeting on November 22, 2002, from 10 a.m. to 5 p.m. EST inclusive.

Agenda items will include, but may not be limited to: Presentations of preliminary reports by subcommittees of the President's Advisory Commission in the subject areas of health, economic and community development, education and immigration; Commission deliberations of subcommittee reports; administrative tasks; deadlines; upcoming events; and comments from the public.

The purpose of the Commission is to advise and make recommendations to the President on ways to increase opportunities for and improve the quality of life of approximately thirteen million Asian Americans and Pacific Islanders living in the United States and the U.S. associated Pacific Island jurisdictions, especially those who are most underserved.

Requests to address the Commission must be made in writing and should include the name, address, telephone number and business or professional affiliation of the interested party. Individuals or groups addressing similar issues are encouraged to combine comments and make their request to address the Commission through a single representative. The allocation of time for remarks will be adjusted to accommodate the level of expressed interest. Written requests must be faxed to (301) 443-0259.

Anyone who has interest in joining any portion of the meeting or who requires additional information about the Commission should contact: Ms. Betty Lam or Mr. Erik F. Wang, Office of the White House Initiative on AAPIs, Parklawn Building, Room 10-42, 5600

Fishers Lane, Rockville, MD, 20857, Telephone (301) 443-2492. Anyone who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Wang no later than November 18, 2002.

Dated: November 8, 2002.

Willis Morris,

Senior Advisor to the Deputy Secretary.

[FR Doc. 02-28880 Filed 11-8-02; 11:16 am]

BILLING CODE 4165-15-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N-0452]

Agency Information Collection Activities; Proposed Collection; Comment Request; New Drug and Biological Drug Products; Evidence Needed to Demonstrate Effectiveness of New Drugs When Human Efficacy Studies Are Not Ethical or Feasible

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's regulations regarding approval of certain new drug and biological products based on efficacy studies conducted in non-human animals.

DATES: Submit written or electronic comments on the collection of information by January 13, 2003.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm>. Submit written comments on the collection of information to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Karen L. Nelson, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites

comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

New Drug and Biological Drug Products; Evidence Needed to Demonstrate Effectiveness of New Drugs When Human Efficacy Studies Are Not Ethical or Feasible

FDA has amended its new drug and biological product regulations to allow appropriate studies in animals in certain cases to provide substantial evidence of effectiveness of new drug and biological products used to reduce or prevent the toxicity of chemical, biological, radiological, or nuclear substances when adequate and well-controlled

efficacy studies in humans cannot be ethically conducted because the studies would involve administering a potentially lethal or permanently disabling toxic substance or organism to healthy human volunteers, and field trials are not feasible before approval. In these circumstances, when it may be impossible to demonstrate effectiveness through adequate and well-controlled studies in humans, FDA is providing that certain new drug and biological products intended to treat or prevent serious or life-threatening conditions could be approved for marketing based on studies in animals, without the traditional efficacy studies in humans. FDA is taking this action because it recognizes the importance of improving medical response capabilities to the use of lethal or permanently disabling chemical, biological, radiological, and nuclear substances in order to protect individuals exposed to these substances.

Respondents to this information collection are business and other for-profit organizations and nonprofit institutions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
314.610(b)(2), 314.630, 601.91(b)(2), and 601.93	1	1	1	5	5
314.610(b), 314.640, 601.91(b), and 601.94	1	1	1	240	240
Total					245

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
314.610(b)(2), 314.630, 601.91(b)(2), and 601.93	1	1	1	1	1
314.610(b), and 601.91(b)	1	1	1	1	1
Total					2

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that only one application of this nature may be submitted every 3 years; however for calculation purposes, FDA is estimating the submission of one application annually. FDA estimates 240 hours for a manufacturer of a new drug or biological product to develop patient labeling and to submit the appropriate

information and promotional labeling to FDA. At this time, FDA cannot estimate the number of postmarketing reports for information collection. These reports are required under 21 CFR parts 310, 600, and 314. Any requirements will be reported under the adverse experience reporting (AER) information collection requirements. The estimated hours for

postmarketing reports range from 1 to 5 hours based on previous estimates for AER; however, FDA is estimating 5 hours for the purpose of this information collection.

The majority of the burden for developing the patient labeling is included under the reporting requirements; therefore, minimal

burden is calculated for providing the guide to patients. As discussed previously, no burden can be calculated at this time for the number of AER reports that may be submitted after approval of a new drug or biologic. Therefore, the number of records that may be maintained also cannot be determined. Any burdens associated with these requirements will be reported under the AER information collection requirements. The estimated recordkeeping burden of 1 hour is based on previous estimates for the recordkeeping requirements associated with the AER system.

Dated: November 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02-28854 Filed 11-12-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N-0355]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Device Recall Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and

clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by December 13, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device Recall Authority—21 CFR Part 810 (OMB Control Number 0910-0432)—Extension

This collection implements medical device recall authority provisions under section 518(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360h) and part 810 (21 CFR part 810). Section 518(e) of the act gives FDA the authority to issue an order requiring the appropriate person, including manufacturers, importers, distributors, and retailers of a device to immediately cease distribution of such device, to immediately notify health professionals and device-user facilities of the order, and to instruct such professionals and facilities to cease use of such device, if FDA finds that there is reasonable

probability that the device intended for human use would cause serious adverse health consequences or death.

Section 518(e) of the act sets out a three-step procedure for issuance of a mandatory device recall order. First, if there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, FDA may issue a cease distribution and notification order requiring the appropriate person to immediately: (a) Cease distribution of the device, (b) notify health professionals and device user facilities of the order, and (c) instruct those professionals and facilities to cease use of the device. Second, FDA will provide the person named in the cease distribution and notification order with the opportunity for an informal hearing on whether the order should be modified, vacated, or amended to require a mandatory recall of the device. Third, after providing the opportunity for an informal hearing, FDA may issue a mandatory recall order if the agency determines that such an order is necessary.

The information collected under the recall authority will be used by FDA to ensure that all devices entering the market are safe and effective, to accurately and immediately detect serious problems with medical devices, and to remove dangerous and defective devices from the market.

The respondents to this proposed collection of information are manufacturers, importers, distributors, and retailers of medical devices.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
810.10(d)	2	1	2	8	16
810.11(a)	1	1	1	8	8
810.12(a) through (b)	1	1	1	8	8
810.14	2	1	2	16	32
810.15(a) through (d)	2	1	2	16	32
810.15(e)	10	1	10	1	10
810.16	2	12	24	40	960
810.17	2	1	2	8	16
Total					1,082

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Explanation of Report Burden Estimate:

The following estimates are based on FDA's experience with voluntary recalls under 21 CFR part 7. FDA expects no more than two mandatory recalls per year, as most recalls are done voluntarily.

Section 810.10(d)—FDA estimates that it will take approximately 8 hours for the person named in a cease distribution and notification order to gather and submit the information required by this section. The total annual burden is 16 hours.

Section 810.11(a)—Based on its experience in similar situations, FDA expects that there will be only one request for a regulatory hearing per year and that it will take approximately one staff day (8 hours) to prepare this request.

Section 810.12(a) through (b)—Based on its experience in similar situations, FDA expects that there will be only one written request for a review of cease distribution and notification order per year and that it will take approximately one staff day (8 hours) to prepare this request.

Section 810.14—Based on its experience with voluntary recalls, FDA estimates that it will take approximately two staff days (16 hours) to develop a strategy for complying with this order.

Section 810.15(a) through (d)—Based on its experience with voluntary recalls, FDA estimates that it will take approximately two staff days (16 hours) to notify each health professional, user facility, or individual of the order.

Section 810.15(e)—Based on its experience with voluntary recalls, FDA estimates that there will be approximately five consignees per recall (10 per year) who will be required to notify their consignees of the order. FDA estimates it will take them about 1 hour to do so.

Section 810.16—FDA estimates that it would take no more than one staff week (40 hours) to assemble and prepare a written status report required by a recall (§ 810.16). The status reports are prepared by manufacturers 6 to 12 times each year. Therefore, each manufacturer would spend no more than 480 hours each year preparing status reports (40 x 12). If there were two FDA invoked recalls each year, the total burden hours would be estimated at 960 hours each year (480 x 2).

Section 810.17—Based on its experience with similar procedures, FDA estimates it would take one staff day (8 hours) to draft a written request for termination of a cease distribution and notification or mandatory recall order.

Dated: November 5, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02-28713 Filed 11-12-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N-1529]

Elaine Yee-Ling Lai; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an

order under the Federal Food, Drug, and Cosmetic Act (the act) debaring Ms. Elaine Yee-Ling Lai for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Ms. Lai was convicted of a felony under Federal law for aiding and abetting the making of a false document containing a materially fictitious statement in a matter within the jurisdiction of a government agency, and that Ms. Lai's conduct undermined the process for the regulation of drugs. Ms. Lai failed to request a hearing and, therefore, has waived her opportunity for a hearing concerning this action.

DATES: This order is effective November 13, 2002.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

SUPPLEMENTARY INFORMATION:

I. Background

On June 9, 1998, the U.S. District Court for the Central District of California accepted Ms. Lai's plea of guilty to one count of aiding and abetting the making of a false document containing a materially fictitious statement in a matter within the jurisdiction of a government agency, the FDA, in violation of 18 U.S.C. 1001(a)(3) and 2. The basis of this conviction was Ms. Lai's act in assisting the principal investigator of a clinical study in creating a fraudulent document for use by FDA to determine whether a new drug should be approved.

As a result of this conviction, FDA served Ms. Lai by certified mail on May 13, 2002, a notice proposing to debar her for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal also offered Ms. Lai an opportunity for a hearing on the proposal. The debarment proposal was based on a finding, under section 306(b)(2)(B)(i)(II) and (a)(2) of the act (21 U.S.C. 335a(b)(2)(B)(i)(II) and (a)(2)) that Ms. Lai was convicted of a felony under Federal law for aiding and abetting the making of a false document containing a materially fictitious statement in a matter within the jurisdiction of a government agency and that Ms. Lai's conduct undermined the process for the regulation of drugs. Ms. Lai was

provided 30 days to file objections and to request a hearing. Ms. Lai did not request a hearing. Her failure to request a hearing constitutes a waiver of her opportunity for a hearing and a waiver of any contentions concerning her debarment.

II. Findings and Order

Therefore, the Director of the Center for Drug Evaluation and Research, under section 306(b)(2) of the act, and under authority delegated to her (21 CFR 5.99), finds that Ms. Elaine Yee-Ling Lai has been convicted of a felony under Federal law for aiding and abetting the making of a false document containing a materially fictitious statement in a matter within the jurisdiction of a government agency and that Ms. Lai's conduct undermined the process for the regulation of drugs.

As a result of the foregoing finding, Ms. Elaine Yee-Ling Lai is debarred for 5 years from providing services in any capacity to a person that has an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262) (see sections 306(c)(1)(B) and (c)(2)(A)(iii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Ms. Lai, in any capacity during her period of debarment, will be subject to civil money penalties. If Ms. Lai, during her period of debarment, provides services in any capacity to a person with an approved or pending drug product application, she will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Ms. Lai during her period of debarment.

Any application by Ms. Lai for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 00N-1529 and sent to the Dockets Management Branch (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 15, 2002.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 02-28715 Filed 11-12-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 20 and 21, 2002, from 9:30 a.m. to 5 p.m.

Location: Holiday Inn, Walker/Wetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Hany W. Demian, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-2036, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12521. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 20, 2002, the committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for a stair-climbing wheelchair. On November 21, 2002, the committee will discuss, make recommendations, and vote on a PMA for growth factors soaked in a collagen sponge used to treat tibial fractures. In addition, on November 21, 2002, the committee will have a general discussion on preclinical and clinical data for spinal devices. Background information for each day's topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at <http://www.fda.gov/cdrh/panelmtg.html>. Material for the November 20, 2002, session will be posted on November 19, 2002; material for the November 21, 2002, session will be posted on November 20, 2002.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending

before the committee. Written submissions may be made to the contact person by November 15, 2002. On each day, oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of each PMA topic and for approximately 30 minutes near the end of the committee deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 15, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301-594-1283, ext. 113, at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the November 20 and 21, 2002, Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 5, 2002.

Linda Arey Silkadany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02-28853 Filed 11-12-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 20, 2002, from 7:30 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Kimberly Littleton Topper, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301-827-7001, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12545. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 20-959, Ebastine by Almirall Prodesfarma, for the proposed indication of relief of nasal and nonnasal symptoms associated with seasonal and perennial allergic rhinitis in adults and children 12 years of age and older.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 13, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 13, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the

agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kimberly Topper at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 4, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02-28852 Filed 11-12-02; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Programs: Forms—(OMB No. 0915-0044)—Revision

The HPSL Program Provides long-term, low-interest loans to students

attending schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, and pharmacy. The NSL Program provides long-term, low-interest loans to students who attend eligible schools of nursing in programs leading to a diploma in nursing, and an associate degree, a baccalaureate degree, or a graduate degree in nursing. Participating HPSL and NSL schools are responsible for determining eligibility of applicants, making loan, and collecting monies owed by borrowers on their outstanding loans. The deferment form (HRSA form 519) provides the schools with documentation of a borrower's eligibility for deferment. The Annual Operating Report (AOR-HRSA form 501) provides the Federal Government with information from participating and non-participating schools (schools that are no longer granting loans but are required to report and maintain program records, student records, and repayment records until all student loans are repaid in full and all monies due the Federal Government are returned) relating to HPSL and NSL program operations and financial activities.

The estimate of burden for the forms are as follows:

Form and number	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Defer-HRSA-519	6,000	1	6,000	10 min	1,000
AOR-HRSA-501	1,048	1	1,048	4 hrs.	4,192
Total Burden	7,048	.....	7,048	.....	5,192

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 6, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02-28855 Filed 11-12-02; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Children's Hospitals Graduate Medical Education (CHGME) Payment Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of children's hospitals graduate medical education (CHGME) Payment Program conference calls.

SUMMARY: This document announces scheduled CHGME Payment Program conference calls for calendar year 2003. The purpose of these conference calls is to provide technical assistance related to the CHGME Payment Program.

DATES: The conference calls will be held on Wednesday, January 22, 2003, from 1:30 p.m. to 3:30 p.m. e.s.t., Wednesday, April 23, 2003, from 1:30 p.m. to 3:30 p.m. e.s.t., and Wednesday, October 22, 2003, from 1:30 p.m. to 3:30 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT:

Ayah E. Johnson, Ph.D., telephone: (301) 443-1058; Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 9A-27, Rockville, Maryland 20857; or by e-mail at: ajohnson@hrsa.gov.

SUPPLEMENTARY INFORMATION: The CHGME Payment Program, as authorized by section 340E of the Public Health Service (PHS) Act (the Act) (42 U.S.C. 256e), provides funds to children's hospitals to address disparity in the level of Federal funding for children's hospitals that result from Medicare funding for graduate medical education (GME). Pub. L. 106-310 amended the CHGME statute to extend the program through fiscal year (FY) 2005.

The statute authorized \$280 million for both direct and indirect medical education payments in FY 2000, \$285 million in FY 2001, and for each of the

FY 2002 through FY 2005 such sums as necessary. Congress appropriated \$40 million in FY2000, \$235 million in FY2001, and \$285 million in FY2002 for the Program. These funds have supported over 4,000 residents receiving training in children's teaching hospitals in 31 states.

The agenda for the conference calls will include but not be limited to: (1) Welcome and opening comments; (2) news releases/updates; (3) reminders; and (4) "on the horizon" topics of interest. Time will also be available for a question and answer period. Agenda items will be determined as priorities dictate.

Interested parties must register, in advance, but not later than 5 days prior to the scheduled conference call(s). Conference call registration forms and information about the Program can be found on the CHGME Payment Program web site. The web site address is <http://bhpr.hrsa.gov/childrenshospitalgme>.

Dated: November 4, 2002.

Elizabeth M. Duke,
Administrator.

[FR Doc. 02-28758 Filed 11-12-02; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443-7978.

Projects for Assistance in Transition from Homelessness (PATH) Annual Report—(0930-0205, revision)—The Center for Mental Health Services awards grants each fiscal year to each of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands from allotments authorized under the PATH program established by Public Law 101-645, 42 U.S.C. 290cc-21 *et seq.*, the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 (section 521 *et seq.* of the Public Health Service (PHS) Act). Section 522 of the PHS Act

requires that the grantee States and Territories must expend their payments under the Act solely for making grants to political subdivisions of the State, and to non-profit private entities (including community-based veterans organizations and other community organizations) for the purpose of providing services specified in the Act. Available funding is allotted in accordance with the formula provision of section 524 of the PHS Act.

This submission is for extension and revision of the current approval of the annual grantee reporting requirements; only minor changes are being made to response choices within a few items. Section 528 of the PHS Act specifies that not later than January 31 of each fiscal year, a funded entity will prepare and submit a report in such form and containing such information as is determined necessary for securing a record and description of the purposes for which amounts received under section 521 were expended during the preceding fiscal year and of the recipients of such amounts and determining whether such amounts were expended in accordance with statutory provisions.

The estimated annual burden for these reporting requirements is summarized in the table that follows.

Respondent	Number of respondents	Responses/respondent	Avg. burden/response (hrs.)	Total burden hrs.
States	56	1	26	1,456
Local provider agencies	398	1	31	12,338
Total	455	.....	.....	13,794

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 5, 2002.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02-28749 Filed 11-12-02; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4734-N-67]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Notice of Funding Availability for Research on Socioeconomic Change in Cities; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Chief Information Officer.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 27, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: Lauren.Wittenberg@omb.eop.gov; fax: 202-395-6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail

Wayne_Eddins@HUD.gov; telephone (202) 708-2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to identifying the social, economic, demographic, and fiscal change occurring in American cities which is an important part of HUD's mission. Empirical research on urban dynamics would provide an understanding of what factors are driving change and the impact of public policy on change.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for Research on Socioeconomic Change in Cities.

Description of Information Collection: Identifying the social, economic, demographic, and fiscal change occurring in American cities is an important part of HUD's mission. Empirical research on urban dynamics will provide an understanding of what factors are driving change and the impact of public policy on change.

OMB Control Number: Pending.

Agency Form Numbers: None.

Members of Affected Public: Not-for-profit institutions, State, Local or Tribal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 40,

number of respondents is 1,700, frequency response is annually, and the hours of response is 21.25.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 5, 2002.

Wayne Eddins,

*Departmental Reports Management Officer,
Office of the Chief Information Officer.*

[FR Doc. 02-28736 Filed 11-12-02; 8:45 am]

BILLING CODE 4210-72-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Hanford Reach National Monument Federal Advisory Committee Meetings Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Federal Advisory Committee meetings.

SUMMARY: The U.S. Fish and Wildlife Service is announcing two meetings of the Hanford Reach National Monument Federal Planning Advisory Committee (Committee). The meetings will take place at the Consolidated Information Center, Washington State University Tri-Cities Campus, 2770 University Drive, Richland, Washington, in Rooms 120 and 120A. Verbal comments will be considered during the course of the meeting and written comments will be accepted at the close of the meeting or via mail to the Monument office (*see addresses*).

DATES: The Committee has scheduled the following meetings:

1. Tuesday, December 3, 2002, from 9 a.m. to 4 p.m.

2. Tuesday, January 7, 2003, from 9 a.m. to 4 p.m.

ADDRESSES: Any member of the public wishing to submit written comments should send those to Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument (HRNM) Federal Planning Advisory Committee, Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, WA 99352; fax (509) 375-0196. Copies of the draft meeting agenda can be obtained from the Designated Federal Official.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting should contact Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument (HRNM) Federal Planning Advisory

Committee (Committee); phone (509) 371-1801, fax (509) 375-0196.

SUPPLEMENTARY INFORMATION: Over the next several months, the Committee will receive information regarding resource reviews that took place on the Monument during the summer of 2002. Additionally, the Committee will be reviewing objectives and goals for the Monument. While public scoping ended on October 12, 2002, the Committee continues to receive public comments via mail and at Committee meetings.

Dated: October 28, 2002.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02-28752 Filed 11-12-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-921-02-1320-EL-P; MTM 92145]

Invitation—Coal Exploration License Application, Big Horn Co., Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of invitation—coal exploration license application MTM 92145.

SUMMARY: Members of the public are hereby invited to participate with Spring Creek Coal Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Big Horn County, Montana, encompassing 200.00 acres:

T. 8 S., R. 39 E., P. M. M.,

Sec. 14: NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$.

Sec. 21: N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$.

SUPPLEMENTARY INFORMATION: Any party electing to participate in this exploration program shall notify, *in writing*, both the State Director, Bureau of Land Management, PO Box 36800, Billings, Montana 59107-6800, and Spring Creek Coal Company, PO Box 67, Decker, Montana 59025. Such written notice must refer to serial number MTM 92145 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the *Sheridan Press* newspaper, whichever is later. This Notice will be published once a week for two (2) consecutive weeks in the *Sheridan Press*, Sheridan, Wyoming.

The proposed exploration program is fully described, and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land

Management. The exploration plan, as submitted by Spring Creek Coal Company, is available for public inspection at the Bureau of Land Management, 5001 Southgate Drive, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Robert Giovanini, Mining Engineer, at (406) 896-5084 or Connie Schaff, Land Law Examiner, at (406) 896-5060, Branch of Solid Minerals, Bureau of Land Management, Montana State Office, PO Box 36800, Billings, Montana 59107-6800.

Dated: September 23, 2002.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 02-28759 Filed 11-12-02; 8:45 am]

BILLING CODE 4310--\$-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-930-08-1310-00-241A; MSES 50961]

Mississippi: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease MSES 50961, Scott County, Mississippi, was timely filed and accompanied by all required rentals and royalties from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of \$10 per acre and 16 $\frac{2}{3}$ percent. Payment of \$500 in administrative fees and a \$155 publication fee has been made.

The Bureau of Land Management is proposing to reinstate the lease effective April 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above. This is in accordance with section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)).

FOR FURTHER INFORMATION CONTACT: Gina Goodwin at (703) 440-1534.

Dated: October 9, 2002.

Walter Rewinski,

Acting State Director.

[FR Doc. 02-28760 Filed 11-12-02; 8:45 am]

BILLING CODE 4310-AG-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Information Quality Guidelines Pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2002

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of guidelines.

SUMMARY: These final guidelines implement guidelines published by the Office of Management and Budget (OMB) in the **Federal Register** which directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of government information disseminated to the public. We, the Office of Surface Mining Reclamation and Enforcement (OSM), are issuing these final Information Quality Guidelines in order to comply with the OMB requirement.

FOR FURTHER INFORMATION CONTACT: Division of Administration, Office of Surface Mining, 1951 Constitution Ave., NW., Washington, DC 20240. Telephone (202) 208-2961 or by e-mail to infoquality@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A notice published by Office of Management and Budget (OMB) in the **Federal Register**, dated February 22, 2002 (67 FR 8452), directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of Government information disseminated to the public. We are issuing these final Information Quality Guidelines in order to comply with OMB and Department of the Interior direction. Draft Information Quality Guidelines were published in the **Federal Register**, on July 22, 2002 (67 FR 47829). One comment was received from a public regulatory review group during the public comment period and was considered, and where applicable or appropriate, was incorporated into our final guidelines.

OSM, which includes Headquarters, three regional offices, and ten field offices, disseminates a wide variety of information to the public regarding the nation's surface coal mining and reclamation activities on Federal, tribal or other lands within states which may include state or privately-owned lands. The disseminated information includes

organizational and management information, program and service products, research and statistical reports, policy and regulatory information, and general reference material. We will evaluate and identify, prior to dissemination, the types of information subject to these guidelines.

II. Information Quality Standards

OSM will make use of OMB's Paperwork Reduction Act (PRA) (44 U.S.C. chapter 35) clearance process to help improve the quality of information that OSM collects and disseminates to the public. All such collections of information will demonstrate in their PRA clearance submissions to OMB that the information will be collected, maintained, and used in a way consistent with the DOI and OMB Quality Information Guidelines. As a matter of good and effective agency information resource management, we will develop a process for reviewing the quality (including utility and integrity) of collected information before it is disseminated to the public.

Information we disseminate to the public is normally subject to one or more levels of internal staff, or supervisory review for quality before actual dissemination.

The number of levels of internal quality review applied in a particular case depends on the nature, scope, and purpose of the information to be disseminated. For example, routine reports that may be prepared by staff about the agency's activities or operations may be subject to one or two levels of staff or supervisory review for basic accuracy and completeness before such reports are released to the general public. Additional levels of internal review, supplementation, clarification, or approval by our management may be appropriate, however, to the extent that a report may be intended as the basis for more complicated budgeting decisions or legislative reporting (e.g. to satisfy a need for greater statistical detail or explanation).

We have adopted the information quality definitions published by OMB and the Department of Interior. they are set forth in IV. below.

III. Information Quality Procedures

While we may vary in our implementation approaches, the basic guidance published by OMB on February 22, 2002, (67 FR 8452) and adopted by the Department of the Interior in the **Federal Register**, dated May 24, 2002 (67 FR 36642) is included in our policy and will apply to our dissemination of information/

The OMB guidelines require that after October 1, 2002, an affected person may seek and obtain, where appropriate, correction of disseminated information that does not comply with the OMB or Department of the Interior guidelines. An affected person is an individual or an entity that may use, benefit from, or be harmed by the dissemination of information at issue. We have established a process for tracking and responding to complaints in accordance with this direction. As part of this process, our website (<http://www.osmre.gov>) is being provided as a means for an affected person to challenge the quality of disseminated information. Written comments may be addressed to the Division of Administration, 1951 Constitution Ave., NW., Washington DC 20240 or by email to infoquality@osmre.gov.

A. How To Challenge Information Quality

If you want to challenge the quality of our disseminated information, please provide the following information: The name and address of the person filing the complaint; specific reference to the information being challenged; a statement of why you believe the information fails to satisfy the standards in the OSM, DOI or OMB guidelines; and how you are affected by the challenged information. You may include suggestions for correcting the challenged information, but it is not mandatory.

B. How We Will Process Complaints

Once we receive a complaint, we will have 10 business days to notify you of receipt. We will also notify the program area that disseminated the challenged information of the receipt of the complaint. We will have 60 calendar days from receipt to evaluate whether the complaint is accurate based on an analysis of all information available to the appropriate program or office. If, within the 60-calendar-day period, we determine that the complaint is without merit, we will notify you. If, within the 60-calendar-day period, we determine that the complaint has merit, we will notify you and the appropriate program or office. We will take reasonable steps to withdraw the information from the public domain and from any decision-making process in which it is being used. If we decide to correct the challenged information, we will notify you of our intent and make the correction. We will determine the schedule and procedure for correcting challenged information, but will not disseminate the challenged information in any form until we make the

appropriate corrections. We will provide you with a copy of the corrected information once completed.

C. How To Appeal an Initial Decision or Lack of Action

If you do not receive the notices within the timeframe described above, or if you wish to appeal a determination of merit, or wish to appeal the proposed correction of information, you may appeal to the Director of OSM or a delegated official. The Director may intervene on behalf of the complainant to maintain the compliant-resolution process. If the Director determines that an appeal of a determination has merit or the proposed correction of information has merit, our appropriate program office will be notified. We will withdraw the challenged information from the public domain, to the extent practical, and will not use the information in any of our decision-making process until we correct it.

D. How We Handle Multiple Complaints

If we receive a second complaint before we issue the 60-calendar-day notice for an overlapping complaint under review, we will consider it at the same time. We will notify the second complainant within 10 business days that an analysis is in progress and provide its status. We will combine the earlier and later complaints and issue a combined 60-calendar-day notice.

If we receive the second complaint on the same subject after we have issued a 60-calendar-day notice, we will conduct a new and separate review.

E. Commenting on Draft and Final Documents

We conduct many activities by soliciting public review and comment on proposed documents before their issuance in final form. These activities include rulemakings and analyses conducted under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the National Environmental Policy Act (NEPA) and other authorities. For the purposes of the Information Quality Guidelines covered by this notice, we will generally treat requests we receive for corrections of information in draft documents as comments on the draft document. We will respond to these comments in the final document.

In the case of rulemakings and other public comment procedures, where we disseminate a study, analysis, or other information before the final agency action of information product, we will consider a request for correction before the final action or information product if we have determined that an earlier

response would not unduly delay issuing the final action or information, and you have shown a reasonable likelihood of suffering actual harm if we do not resolve the complaint before the final action or information product dissemination.

When we receive requests for corrections of information in a final document, we will first determine whether the request pertains to an issue discussed in the draft document where the requester could have commented. If we determine that the requester had the opportunity to comment on the issue at the draft stage and failed to do so, we may consider the request to have no merit.

If information that did not appear in the draft document is the subject of a request for correction, we will consider that request. If we determine that the information does not comply with OMB or our guidelines and that the non-compliance presents significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, OSM will use existing mechanisms to remedy the situation, such as re-proposed a rule or supplementing public analysis.

F. Annual Report on Complaints

We will submit a report for each fiscal year to the Department of the Interior's Office of the Chief Information Officer (OCIO) not later than November 30 of each year. The report will identify the number, nature, and resolution of complaints received. The OCIO staff will consolidate all bureau reports into a Departmental annual report and submit to the Director of OMB no later than January 1, annually.

IV. Definitions

1. "Quality" is an encompassing term that includes utility, objectivity, and integrity. Therefore, the guidelines sometimes refer to these four statutory terms collectively as "quality."

2. "Utility" refers to the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that we disseminate to the public, we need to reconsider the uses of the information not only from our perspective, but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the public's perspective, we will take care to address that transparency in our review of the information.

3. "Objectivity" involves two distinct elements: presentations and substance.

4. "Objectivity" includes whether we disseminate information in an accurate,

clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation. Also, we will identify the sources of the disseminated information (to the extent possible, consistent with confidentiality protections) and include it in a specific financial or statistical context so that the public can assess whether there may be some reason to question the objectivity of the sources. Where appropriate, we will identify transparent documentation and error sources affecting data quality.

(b) In addition, "objectively" involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific, financial, or statistical context, we will analyze the original and supporting data and develop our results using sound statistical and research methods.

(1) If data and analytical results have been subjected to formal, independent, external peer review, we will generally presume that the information is of acceptable objectivity. However, a complainant may rebut this presumption based on a persuasive showing in a particular instance. If we use peer review to help satisfy the objectivity standard, the review process employed shall meet the general criteria for competent and credible peer review recommended by OMB's Office of Information and Regulatory Affairs (OIRA) to the President's Management Council (9/20/01) (<http://www.whitehouse.gov/omb/inforeg/infopoltech.html#dq>). OIRA recommends that: (i) Peer reviewers be selected primarily on the basis of necessary technical expertise, (ii) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand, (iii) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (iv) peer reviews be conducted in an open and rigorous manner.

(2) Because we are responsible for disseminating influential scientific, financial, and statistical information, we will include a high degree of transparency about data and methods to facilitate the reproducibility (the ability to reproduce the results) of the information by qualified third parties. To be considered "influential," as that term is defined in item 9 below, information must constitute a principal basis for substantive policy positions adopted by OSM. It should also be

noted that the "influential" definition applies to "information" itself, not to decisions that the information may support. Even if a decision or action by OSM is itself very important, a particular piece of information supporting it may or may not be "influential" as defined by these guidelines.

Original and supporting data will be subject to commonly accepted scientific, financial, or statistical standards. We will not require that all disseminated data be subjected to a reproducibility requirement. We may identify, in consultation with the relevant scientific and technical communities, those particular types of data that can practically be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints. It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (*i.e.*, a new experiment, test of sample) that will not be required before each release of information.

With regard to analytical results, we will generally require sufficient transparency about data and research methods that a qualified member of the public could undertake an independent re-analysis. These transparency standards apply to our analysis of data from a single study as well as the analyses that combine information from multiple studies.

Making the data and methods publicly available will assist us in determining whether analytical results are reproducible. However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.

In situations where public access to data and methods will not occur due to other compelling interests, we will apply especially rigorous checks to analytical results and document what checks were undertaken. We will, however, disclose the specific data sources used and the specific quantitative methods and assumptions we employed. We will define the type of checks, and the level of detail for documentation given the nature and complexity of the issues. We will use or adapt the quality principles applied by Congress to risk information used and disseminated under the Safe Drinking Water Amendments of 1996 (42 U.S.C. 300g-1(b)(3)(A) and (B)).

Since we are responsible for dissemination of some types of health and public safety information, we will interpret the reproducibility and peer-

review standards in a manner appropriate to assuring the timely flow of vital information from us to appropriate government agencies and the public. We may temporarily waive information from appropriate government agencies and the public. We may also temporarily waive information quality standards under urgent situations (*e.g.*, imminent threats to public health, the environment, the national economy, or homeland security) in accordance with the latitude specified in the Department guidelines.

4. "Integrity" refers to the security of information—protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

5. "Information" means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions, where our presentation makes it clear that what is being offered is someone's opinion rather than fact or our views.

6. "Government information" means information created, collected, processed, disseminated, or disposed of by or for the Federal Government.

7. "Information dissemination product" means any books, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, an agency disseminates to the public. This definition includes any electronic document, CD-ROM, or Web Page.

8. "Dissemination" means agency initiated or sponsored distribution of information to the public (see 5 CFR 1320.3(d) for definition of "conduct or sponsor"). Dissemination does not include distribution limited to: Government employees or agency contractors or grantees; intra or inter-agency use or sharing of government information; and response to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law. This definition also does not include distribution limited to: Correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes.

9. "Influential," when used in the phrase "influential scientific, financial,

or statistical information," means that we can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important private sector decisions. We are authorized to define "influential" in ways appropriate for us, given the nature and multiplicity of issues for which we are responsible.

10. "Reproducible" means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision.

(a) For information judged to have more important impacts, the degree of imprecision that is tolerated is reduced.

(b) For information judged to have less important impacts, the degree of imprecision that is tolerated is increased.

(c) If we apply the reproducibility test to specific types of original supporting data as published by the DOI and OMB for Quality Information Guidelines, those guidelines will provide the relevant definitions of reproducibility (e.g., standards for replication of laboratory data).

(d) With respect to analytical results, "capable of being substantially reproduced" means that independent analysis of the original or supporting data using identical methods would demonstrate whether similar analytical results, subject to an acceptable degree of imprecision or error, could be generated.

V. Legal Effect

These guidelines are intended only to improve the internal management of the Office of Surface Mining Reclamation and Enforcement relating to information quality. Nothing in these guidelines is intended to create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its offices, or any other person. These guidelines do not provide any right to judicial review.

Dated: October 4, 2002.

Jeffrey D. Jarrett,

Director.

[FR Doc. 02-28802 Filed 11-8-02; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comment requested

ACTION: 60-day notice of information collection under review; reinstatement,

without change, of a previously approved collection for which approval has expired; COPS Universal Hiring Program (UHP) and COPS in Schools (CIS) Grant Applications.

The Department of Justice Office of Community Oriented Policing Services (COPS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 13, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, 202-305-7780, Office of Community Oriented Policing Services, U.S. Department of Justice, 1100 Vermont Ave., NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Universal Hiring Program and COPS in Schools Grant Applications.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None. *Sponsoring component:* Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* State, local and tribal governments. *Other:* none. The COPS Office requests OMB approval of a reinstatement, without change, of a previously approved collection for which approval has expired. It will continue to be used by state, local and tribal jurisdictions to apply for federal funding which will be used to increase the number of sworn law enforcement positions in their law enforcement agencies. These grants are meant to enhance law enforcement infrastructures and community policing efforts in both local communities (Universal Hiring Program) and local schools (COPS in Schools).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are an estimated 3,500 respondents (or grantees): 2,000 respondents for the UHP, and 1,500 respondents for the CIS. The estimated amount of time required for the average respondent is 8 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 31,500 estimated burden hours associated with this collection: 18,000 annual burden hours for UHP, and 13,500 burden hours for CIS.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 5, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02-28739 Filed 11-12-02; 8:45 am]

BILLING CODE 4410-AT-M

DEPARTMENT OF JUSTICE

Office of Community Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: New Collection; Public Safety/Crime Prevention Proposal Kit.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the

following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 153, page 51599 on August 8, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 13, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)-395-7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Public Safety/Crime Prevention Proposal Kit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and local law enforcement entities. Other: None. Abstract: The information collected by the Public Safety/Crime Prevention Proposal Kit is requested to obtain a comprehensive understanding of project objectives in accordance with the Federally appropriated mandate and grant program policies of the COPS Office.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 160 responses. The estimated amount of time required for the average respondent to respond is 15 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,560 annual burden hours associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: November 6, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02-28755 Filed 11-12-02; 8:45 am]

BILLING CODE 4410-AT-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day Notice of Information Collection Under Review: New Collection; Prescription Monitoring Program Questionnaire.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the

public and affected agencies. This proposed information collection was previously published in the **Federal Register** volume 67, Number 167, pages 55274-55275 on August 2, 2002 allowing for a 60-day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until December 13, 2002. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-7285.

Written comments and suggestions are requested from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Prescription Monitoring Program Questionnaire.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection:

Form No.: None.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: State agencies.

Other: None.

Abstract: This questionnaire permits the Drug Enforcement Administration to compile and evaluate information regarding the design, implementation and operation of state prescription monitoring programs. Such information allows DEA to assist states in the development of new programs designed to enhance the ability of both DEA and state authorities to prevent, detect, and investigate the diversion and abuse of controlled substances.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 25 respondents. 1 response per year \times 5 hours per response = 125 annual burden hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 125 annual burden hours. 25 respondents \times 5 hours per respondent per year.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004.

Dated: November 6, 2002.

Robert B. Briggs,

Clearance Officer, U.S. Department of Justice.
[FR Doc. 02-28737 Filed 11-12-02; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection

Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: revision of a currently approved collection. Deaths in Custody—series of collections from local jails, State prisons, juvenile and law enforcement detention centers.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until January 13, 2002. This

process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact, Lawrence A. Greenfeld, Director, Bureau of Justice Statistics, 810 Seventh St. NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection

(2) *Title of the Form/Collection:* Deaths In Custody—Series of Collections from Local Jails, State Prisons, Juvenile and Law Enforcement Detention Centers. The series includes the forms: Quarterly Summary of Inmate Deaths in State Prison; State Prison Inmate Death Report; Quarterly Summary of Deaths in State Juvenile Residential Facilities; State Juvenile Residential Death Report; Quarterly Report on Inmates Under Jail Jurisdiction; Annual Summary on Inmates Under Jail Jurisdiction; Quarterly Report on Inmates in Private and Multi-Jurisdiction Jails; Annual Summary on Inmates in Private and Multi-Jurisdictional Jails; Quarterly Summary of Deaths in Law Enforcement Custody; and Law Enforcement Custodial Death Report.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: *Form Number(s):* NPS-4, NPS-4A, NPS-5, NPS-5A, CJ-9, CJ-9A, CJ-10, CJ-10A, CJ-11 and CJ-11A. Corrections Statistics Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: *Primary:* Local jail administrators, (one reporter from each of the 3,083 local jail jurisdictions in the United States), State prison administrators (one reporter from each of the 50 States and the District of Columbia), and State juvenile correctional administrators (one reporter from each of the 50 States and the District of Columbia) responsible for keeping records on inmates will be asked to provide information for the following categories: (a) During each reporting quarter, the number of deaths of persons in their custody; and (b) As of January 1 and December 31 of each reporting year, the number of male and female inmates in their custody (local jails only); and (c) Between January 1 and December 31 of each reporting year, the number of male and female inmates admitted to their custody (local jails only); and (d) The name, date of birth, gender, race/ethnic origin, and date of death for each inmate who died in their custody during each reporting quarter; and (e) The admission date, legal status, and current offenses for each inmate who died in their custody during the reporting quarter; and (f) Whether or not an autopsy was conducted by a medical examiner or coroner to determine the cause of each inmate death that took place in their custody during the reporting quarter; and (g) The location and cause of each inmate death that took place in their custody during the reporting quarter; and (h) In cases where the cause of death was illness/natural causes (including AIDS), whether or not the cause of each inmate death was the result of a pre-existing medical condition, and whether or not the inmate had been receiving treatment for that medical condition; and (i) In cases where the cause of death was accidental injury, suicide, or homicide, when and where the incident causing the inmate's death took place.

As part of the conference agreement for FY2000 appropriations, the Bureau of Justice Statistics was directed by the U.S. Congress "to implement a voluntary annual reporting system of all deaths occurring in law enforcement custody." BJS received OMB approval to conduct such an annual collection

(OMB No. 1121-0249). In the time since submitting that collection for OMB approval, the President signed The Deaths in Custody Act of 2000 into law (Pub. L. 106-297). To comply with Pub. L. 106-297's new requirement for a quarterly collection of inmate death data from local jails, State prisons, and juvenile facilities, OMB granted BJS an expanded clearance under the existing number (OMB No. 1121-0249) for the following series of forms: NPS-4, NPS-4A, NPS-5, NPS-5A, CJ-9, CJ-9A, CJ-10, and CJ-10A.

When this expanded OMB Clearance No. 1121-0249 was granted in September 2001, BJS had not yet developed a data collection strategy for measuring deaths in law enforcement custody "in the process of arrest", as required by Pub. L. 106-297. At this time, BJS proposes a data collection program to measure these law enforcement deaths which utilizes State-level central reporters (one reporter from each of the 50 States and the District of Columbia) from each State's criminal justice Statistical Analysis Center (SAC) to provide information for the following categories:

(a) During each reporting quarter, the number of deaths of persons in the custody of State and local law enforcement during the process of arrest; (b) The deceased's name, date of birth, gender, race/Hispanic origin, and legal status at time of death; (c) The date and location of death, the manner and medical cause of death, and whether an autopsy was performed; (d) The law enforcement agency involved, and the offenses for which the inmate was being charged; (e) In cases of death prior to booking, whether death was the result of a pre-existing medical condition or injuries sustained at the crime or arrest scene, and whether the officer(s) involved used any weapons to cause the death; (f) In cases of death prior to booking, whether the deceased was under restraint in the time leading up to the death, and whether their behavior at the arrest scene included threats or the use of any force against the arresting officers; (g) In cases of death after booking, the time and date of the deceased's entry into the law enforcement booking facility where the death occurred, and the medical and mental condition of the deceased at the time of entry; and (h) In cases of accidental, homicide or suicide deaths after booking) who and what were the means of death (e.g., suicide by means of hanging).

In States where the SAC cannot perform this function, a statewide central reporter will be selected from among the following: the State Attorney

General's office, the State police, the State Medical Examiner's Office, and the State respondent to the Federal Bureau of Investigation's Uniform Crime Reporting program. This collection will supplement the existing quarterly data collections on State prison, local jail and juvenile correctional facility inmate deaths which the Bureau of Justice Statistics has already begun in order to implement Pub. L. 106-297. The Bureau of Justice Statistics will use this new information to publish an annual report on deaths in custody. The report will be made available to the U.S. Congress, Executive Officer of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics and data.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are an estimated 3,236 respondents associated with this collection. The estimated average time to respond per form is listed below.

Quarterly Summary of Inmate Deaths in State Prisons (NPS-4)/quarterly—51 respondents (average response time = 5 minutes)

State Prison Inmate Death Report (NPS-4A)/quarterly—51 respondents (average response time = 30 minutes per reported death)

Quarterly Summary of Deaths in State Juvenile Residential Facilities (NPS-5)/quarterly—51 respondents (average response time = 5 minutes)

State Juvenile Residential Death Report (NPS-5A)/quarterly—51 respondents (average response time = 30 minutes per reported death)

Quarterly Report on Inmate Deaths Under Jail Jurisdiction (CJ-9)/quarterly—2,989 respondents (average response time = 5 minutes + 30 minutes per reported death)

Annual Summary on Inmates Under Jail Jurisdiction (CJ-9A)/annual—2,989 respondents (average response time = 15 minutes)

Quarterly Report on Inmate Deaths in Private and Multi-Jurisdiction Jails (CJ-10)/quarterly—94 respondents (average response time = 5 minutes + 30 minutes per reported death)

Annual Summary on Inmates in Private and Multi-Jurisdiction Jails (CJ-10A)/annual—94 respondents (average response time = 15 minutes)

Quarterly Summary of Deaths in Law Enforcement Custody (CJ-11)/quarterly—51 respondents (average response time = 5 minutes)

Law Enforcement Custodial Death Report (CJ-11A)/quarterly—51 respondents (average response time = 60 minutes per reported death).

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 4,319 burden hours annually associated with this information collection.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 5, 2002.

Brenda E. Dyer,

*Department Deputy Clearance Officer,
Department of Justice.*

[FR Doc. 02-28738 Filed 11-12-02; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9:30 a.m., Tuesday, November 19, 2002.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The One Item is Open to the Public.

MATTER TO BE CONSIDERED:

7508 Railroad Accident Report—Collision of Two Canadian National/Illinois Central Railway Trains near Clarkston, Michigan, November 15, 2001.

News Media Contact: Telephone: (202) 314-6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314-6305 by Friday, November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314-6410.

Dated: November 8, 2002.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 02-28947 Filed 11-8-02; 3 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-272, 50-311, 50-354, and 50-219; License Nos. DPR-70, DPR-75, NPF-57, and DPR-16]

PSEG Nuclear, LLC and Amergen Energy Company, LLC; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor

Regulation, has issued a Director's Decision with regard to a letter dated September 17, 2001, filed by the UNPLUG Salem Campaign, hereinafter referred to as the "petitioner." The petition was supplemented on January 9 and 10, 2002. The petition concerns the operation of the Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), Hope Creek Generating Station (Hope Creek), and Oyster Creek Nuclear Generating Station (Oyster Creek).

The petitioner requested that the U.S. Nuclear Regulatory Commission (Commission or NRC) take the following actions:

(1) Order either the closure of, or an immediate security upgrade at, the Salem, Hope Creek, and Oyster Creek.

(2) Order the plants' defenses to be upgraded to withstand a jet crash similar to that which occurred at the World Trade Center (WTC) on September 11, 2001.

(3) Require all spent fuel pools to be brought into the containment buildings, or a new containment building, able to withstand a jet crash, should be built for them.

(4) Cancel all plans for a dry cask storage at any of New Jersey's plants until a jet-bomber-proofed containment is built for them.

(5) Triple the number of Operational Safeguards Response Evaluation (OSRE) security inspections.

(6) Cancel proposals to allow nuclear plants to conduct their own security inspections.

As a basis for the request described above, the Petitioner cited the terrorist attacks on September 11, 2001, stating that New Jersey's four nuclear power plants are vulnerable to terrorist threats, including a suicide airplane attack similar to the attack on the WTC. The UNPLUG Salem Campaign considers such operation to be potentially unsafe and to be in violation of Federal regulations.

On December 7, 2001, the NRC staff informed the Petitioner in a telephone call that the Commission had decided to treat the letter dated September 17, 2001, as a petition pursuant to § 2.206 of title 10 of the Code of Federal Regulations (10 CFR 2.206). In addition, the NRC staff informed the Petitioner that because the September 17, 2001, letter raised sensitive security issues, the Commission was deferring application of certain public aspects of the process described in Management Directive (MD) 8.11, "Review Process for 10 CFR 2.206 Petitions," pending further developments related to the NRC's security review. Accordingly, the NRC staff did not offer the Petitioner the opportunity to provide, in a public

forum, additional information to support the September 17, 2001, letter before the NRC's Office of Nuclear Reactor Regulation (NRR) Petition Review Board (PRB). Rather, the NRC staff requested that the Petitioner forward any additional information related to the petition to the assigned petition manager.

By an acknowledgment letter dated December 20, 2001, the NRC staff formally notified the Petitioner that the letter dated September 17, 2001, met the criteria for review under 10 CFR 2.206, and that the NRC staff would act on the request within a reasonable time. The acknowledgment letter further stated that the Commission had, in effect, partially granted the Petitioner's request for immediate actions in that the NRC took action immediately after September 11, 2001, to enhance security at all nuclear facilities, including the four nuclear power plants located in New Jersey. The NRC staff also informed the Petitioner in the acknowledgment letter that the issues raised in the petition were being referred to NRR for appropriate action.

The Petitioner responded to the acknowledgment letter by electronic mail on January 9 and 10, 2002, and provided additional information that the staff considered in its evaluation of the petition. When the NRC received the Petitioner's original letter and additional information, it was determining the criteria for releasing security-related information in light of the events of September 11, 2001. As such, certain correspondence was initially withheld from the public document room due to the potential for sensitive, security-related information to be contained in these documents. With the exception of one report, the Petitioner's incoming letter and subsequent correspondence are now publicly-available.

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to licensees for comment on May 16, 2002. The Petitioner responded with comments on August 4 and 7, 2002, and PSEG Nuclear LLC (PSEG) responded on June 21, 2002. The comments and the NRC staff's response to them are included with the Director's Decision.

The Petitioner raised a number of issues associated with protecting our nation's nuclear power plants from terrorism. However, long before the tragic events of September 11, 2001, the Commission had recognized the need for strict safeguards and security measures at these facilities. NRC regulations have ensured that nuclear power plants are among the most hardened and secure industrial facilities

in our nation. Since September 11, 2001, the NRC has directed a number of security enhancements at nuclear power plants to address the continuing threat environment. The Congress, as well as other Federal, State, and Local governmental authorities involved in protecting public health and safety, have also responded to protect all industrial facilities, both nuclear and non-nuclear, against terrorism. The Director of the Office of Nuclear Reactor Regulation has determined that the Commission has, in effect, partially granted certain elements of the Petitioner's request for increased security at Salem, Hope Creek, and Oyster Creek to the extent that many of the Petitioner's requests were included within the scope of Orders issued to all nuclear power plants on February 25, 2002, and are a part of the NRC staff's comprehensive review to evaluate the agency's security and safeguards programs. The reasons for this decision are explained in the Director's Decision pursuant to 10 CFR 2.206 DD-02-03, the complete text of which is available for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the ADAMS Public Library component on the NRC Web site, <http://www.nrc.gov/reading-rm.html> (the Public Electronic Reading Room). Documents associated with this Director's Decision may be found in ADAMS by referencing Package Accession No. ML022470404, or individually as follows: (1) Director's Decision, ML022470314; (2) UNPLUG Salem response dated August 4, 2002, ML022480149; (3) Union of Concerned Scientists letter dated August 7, 2002, ML022480163; (4) PSEG letter dated June 21, 2002, ML022480173; and (5) Memorandum to Ledyard Marsh, "Staff Response to Comments on Proposed Director's Decision," ML022470402.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated in Rockville, Maryland, this 1st day of November, 2002.

For the Nuclear Regulatory Commission.
Jon R. Johnson,
Deputy Director, Office of Nuclear Reactor Regulation.
 [FR Doc. 02-28761 Filed 11-12-02; 8:45 am]
BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 25-49

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995 and 5 CFR part 1320), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reclearance of a revised information collection. RI 25-49, Verification of Full-Time School Attendance, is used to verify that adult student annuitants are entitled to payments. OPM must confirm that a full-time enrollment has been maintained.

Approximately 10,000 RI 25-49 forms are completed annually. Each form takes approximately 60 minutes to complete. The annual estimated burden is 10,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or e-mail to mbtoomey@opm.gov. Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415-3540.

and

Stuart Shapiro, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING

ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget & Administrative Services Division, (202) 606-0623.

Office of Personnel Management.
Kay Coles James,
Director.
 [FR Doc. 02-28808 Filed 11-12-02; 8:45 am]
BILLING CODE 6325-50-P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for a Revised Information Collection: Generic Survey Plan

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget a request for review of a revised information collection. The Generic Survey Plan was revised to be an umbrella clearance for all OPM customer satisfaction surveys used with OPM programs and services. This Plan satisfies the requirements of Executive Order 12862 and the guidelines set forth in OMB's Resources Manual for Customer Surveys.

The surveys completed will include web-based (electronic), paper-based, telephone and focus groups. We estimate approximately 3,997,780 surveys will be completed in FY 2003, 4,747,790 surveys in FY 2004 and 6,129,100 surveys in FY 2005. The time estimate varies from 1 minute to 2 hours with the average being 15 minutes. The annual estimated burden is 614,802 hours for FY 2003, 704,812 hours for FY 2004, and 794,769 hours for FY 2005.

For copies of this proposal, contact Mary Beth Smith-Toomey on FAX (202) 418-3251 or E-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before December 13, 2002.

ADDRESSES: Send or deliver comments to:

Mary Beth Smith-Toomey, OPM PRA Officer, U.S. Office of Personnel Management, 1900 E St., NW., Room 5415, Washington, DC 20415.

and

Stuart Shapiro, Agency Desk Officer, Office of Management and Budget, 725 17th St., NW., Room 10235, Washington, DC 20503.

Office of Personnel Management.
Kay Coles James,
Director.
 [FR Doc. 02-28811 Filed 11-12-02; 8:45 am]
BILLING CODE 6325-47-P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Revised Information Collection: OPM Form 1300, Presidential Management Intern Program Application

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) submitted a request to the Office of Management and Budget (OMB) for review of a revised information collection for OPM Form 1300, Presidential Management Intern Program Application. Approval of the Presidential Management Intern Program (PMI) application is necessary to facilitate the timely nomination, selection and placement of Presidential Management Intern finalists in Federal agencies.

The 60-day **Federal Register** Notice was published on June 24, 2002 (FR Doc. 02-15805) to request comments. No comments were received. The following changes have been made to the application: (1) A cover page was added to provide application instructions, updated Privacy Act Statement and updated Public Burden Statement; (2) removed the unique control number that was pre-printed within the footer of the form that is scanned in along with the applicant's information, this has been replaced with the applicant's Social Security Number on each page; (3) added an additional occupational preference (area of work interest) to include "Transportation"; and (4) minor edits and spacing.

We estimate 2000 applications will be received and processed in the 2002/2003 open season for PMI applications. Each application takes approximately 2 hours to complete (one hour for applicants (nominees) and one hour for nominating school official(s)). The annual estimated burden is 4,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey at (202) 606-8358, fax (202) 418-3251 or e-mail to mbtoomey@opm.gov. Please include your complete mailing address with your request.

DATES: Comments on this proposal should be received within thirty (30) calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Rob Timmins, U.S. Office of Personnel Management, Employment Service, 1900 E Street, NW., Room 1425, Washington, DC 20415-9820, e-mail: ratimmin@opm.gov and Stuart Shapiro, OPM Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02-28812 Filed 11-12-02; 8:45 am]

BILLING CODE 6325-38-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 202(a)(11)-1, SEC File No. 270-471, OMB Control No. 3235-0532

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is "Certain Broker-Dealers Deemed Not To Be Investment Advisers." Proposed rule 202(a)(11)-1 under the Investment Advisers Act of 1940 ("Advisers Act") would allow broker-dealers registered with the Commission to manage non-discretionary brokerage accounts without being subject to the Advisers Act regardless of the form of compensation charged those accounts provided that certain conditions are met. The rule would require that all advertisements for brokerage accounts charging an asset-based fee and all agreements and contracts governing the operation of those accounts contain a prominent statement that the accounts are brokerage accounts. This collection

of information is necessary so that customers are not confused with respect to the services that they are receiving, *i.e.*, to prevent customers and prospective customers from mistakenly believing that the account is an advisory account subject to the Advisers Act. The collection will assist customers in making informed decisions regarding whether to establish accounts.

The respondents to this collection of information are all broker-dealers that are registered with the Commission. The Commission has estimated that the average annual burden for ensuring compliance with the disclosure element of the rule is 5 minutes per broker-dealer taking advantage of the rule. If all of the approximately 8,100 broker-dealers registered with the Commission took advantage of the rule, the total estimated annual burden would be 673 hours (.083 hours \times 8,100 brokers).

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: November 5, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-28745 Filed 11-12-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25794 ; 812-12554]

Federated Index Trust, *et al.*; Notice of Application

November 6, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the

Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

SUMMARY OF THE APPLICATION: The order would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: Federated Index Trust (the "Trust") and Federated Investment Management Company ("the Adviser").

FILING DATES: The application was filed on June 21, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 2, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549-0609. Applicants, *c/o* Matthew G. Maloney, Esq., Dickstein Shapiro Morin & Oshinsky LLP, 2101 L Street, NW, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: John Yoder, Attorney-Adviser, at (202) 942-0544, or Nadya Roytblat, Assistant Director, at (202) 942-0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549-0102 (tel. 202-942-8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Trust currently offers four series ("Funds"), each of which has its own investment objectives, policies and restrictions. The Adviser is registered under the Investment Advisers Act of 1940 (the

“Advisers Act”), and serves as the investment adviser to the Funds.¹

2. The Trust is the only existing investment company that currently intends to rely on the order. Applicants represent that if the name of any Fund should contain the name of a Subadviser, it will also contain the name of the Adviser, which will appear before the name of the Subadviser.

3. The Adviser serves as the investment adviser to each Fund pursuant to an investment advisory agreement with the Trust (“Advisory Agreement”) that was approved by the board of trustees of the Trust (the “Board”), including a majority of the Trustees who are not “interested persons,” as defined in section 2(a)(19) of the Act (“Independent Trustees”), and the shareholders of each Fund. Under the terms of the Management Agreement, the Adviser provides supervision of the investments of the Funds and may, as permitted by the Board, hire one or more subadvisers (“Subadvisers”) to effect purchases and sales of portfolio securities pursuant to separate investment advisory agreements (“Subadvisory Agreements”). Each Subadviser is or will be an investment adviser registered under the Advisers Act. Subadvisers are recommended to the Board by the Adviser and selected and approved by the Board. Each Subadviser’s fees are paid by the Adviser out of the management fees received by the Adviser from the respective Fund.

4. The Adviser monitors the Funds and the Subadvisers and makes recommendations to the Board regarding allocation of assets between Subadvisers and is responsible for recommending the hiring, termination and replacement of Subadvisers. The Adviser recommends Subadvisers based on a number of factors used to evaluate their skills in managing assets pursuant to particular investment objectives.

5. Applicants request relief to permit the Adviser, subject to the Board’s approval, to enter into and materially amend Subadvisory Agreements without shareholder approval. The requested relief would not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as a Subadviser to

one or more of the Funds (an “Affiliated Subadviser”).

Applicants Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company’s outstanding voting securities. Rule 18f-2 under the act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Funds’ shareholders rely on the Adviser to select the Subadvisers best suited to achieve a Fund’s investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants submit that the requested relief will reduce the Funds’ expenses associated with shareholder meetings and proxy solicitations, and enable the Funds to operate more efficiently. Applicants also note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f-2 under the Act.

Applicants’ Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund, as described in this application, will be approved by the vote of a majority of the Fund’s outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholders before offering shares of that Fund to the public.

2. Each Fund relying on the requested relief will disclose in its prospectus the existence, substance, and effect of any

order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the Application. The prospectus will prominently disclose that the Adviser has ultimate responsibility, subject to review of the Board, to monitor and evaluate Subadvisers and recommend their hiring, termination and replacement.

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with an Affiliated Subadviser without that agreement, including the compensation to be paid under it, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust’s Board minutes, that the change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser, the Adviser will furnish shareholders of the affected Fund with all information about the Subadviser that would be included in a proxy statement. The Adviser will meet this condition by providing shareholders of the applicable Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The Adviser will provide general management services to the Funds including overall supervisory responsibility for the general management and investment of each Fund’s securities portfolio and, subject to review and approval by the Board, will (a) set each Fund’s overall investment strategies; (b) evaluate, select, and recommend Subadvisers to manage all or a part of a Fund’s assets; (c) when appropriate, allocate and reallocate the Fund’s assets among multiple Subadvisers; (d) monitor and evaluate the performance of the Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with the Fund’s investment objectives, restrictions and policies.

8. No trustee or officer of the Trust or director or officer of the Adviser will

¹ Applicants request that the relief also apply to any registered open-end investment company or series thereof that (a) is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser; (b) uses the management structure described in the application; and (c) complies with the terms and conditions of the requested order (included in the term “Funds”).

own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee, or officer), any interest in a Subadviser except for: (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-28807 Filed 11-12-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46765; File No. SR-Amex-2002-91]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Suspension of Transaction Charges for Certain Exchange-Traded Funds

November 1, 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 November 1, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II 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

Amex proposes to suspend until November 30, 2002 Exchange transaction charges for specialist, Registered Trader and broker-dealer orders for the iShares Lehman 1-3 year Treasury Bond Fund; iShares Lehman 7-10 year Treasury Bond Fund; Treasury 10 FITR ETF; Treasury 5 FITR ETF; Treasury 2 FITR ETF; and Treasury

1 FITR ETF; and to suspend customer transaction charges for an indefinite period for Treasury 10 FITR ETF; Treasury 5 FITR ETF; Treasury 2 FITR ETF; and Treasury 1 FITR ETF.

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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has suspended transaction charges for transactions in the iShares Lehman 1-3 year Treasury Bond Fund (Symbol: SHY); iShares Lehman 7-10 year Treasury Bond Fund (Symbol: IEF); iShares Lehman 20+ year Treasury Bond Fund (Symbol: TLT); and iShares GS \$ InvesTop™ Corporate Bond Fund (Symbol: LQD) ("Funds") for specialist, Registered Trader and broker-dealer orders until October 31, 2002.³ The Exchange proposes to extend until November 30, 2002 the suspension of transaction charges in SHY and IEF for specialist, Registered Trader and broker-dealer orders. The Exchange will not suspend transaction charges for TLT and LQD beyond October 31, 2002 for specialist, Registered Trader and broker-dealer orders.

In addition, the Exchange proposes to waive transaction charges for transactions in Treasury 10 FITR ETF (Symbol: TTE); Treasury 5 FITR ETF (TFI); Treasury 2 FITR ETF (TOU); and Treasury 1 FITR ETF (TFT) until November 30, 2002 for specialist, Registered Trader and broker-dealer orders; and proposes to waive customer transaction charges in these securities for an indefinite time period.

The Exchange believes a suspension of fees for these securities is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee

suspension with the Commission pursuant to Section 19(b)(3)(A) of the Act.⁴

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(4) of the Act in particular because it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁶ The proposed rule change effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.⁷

The Exchange requests that the Commission waive the provision in Rule 19b-4(f)(6)⁸ that the proposed rule

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ *Id.*

⁶ 17 CFR 240.19b-4(f)(6).

⁷ As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission.

⁸ 17 CFR 240.19b-4(f)(6).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 46618 (October 8, 2002), 67 FR 63714 (October 15, 2002).

change does not become operative for 30 days after the date of the filing. Trading in the iShares Funds that are the subject of this filing began trading on the Exchange on July 26, 2002, and as noted above, fee suspensions have been previously filed with the Commission pursuant to Rule 19b-4.⁹ Extension of the fee suspension for specialist, Registered Trader and broker-dealer orders will result in beneficial cost savings for members and other market participants. In addition, trading in the FITRs ETFs will begin on November 1, 2002 and implementation of the fee suspensions by that date will result in the same beneficial cost savings. The Exchange will reassess the waiver for specialist, Registered Trader and broker-dealer orders beyond November 30, 2002, and will make any required filing pursuant to Rule 19b-4 prior to that date.

The Commission has determined to designate that the proposed rule change become operative on November 1, 2002. The Commission believes that this operative date is consistent with the protection of investors and the public interest because it will permit the fee suspensions to continue for the iShares products on an uninterrupted basis and will provide all market participants with the fee suspension for the new FITR ETFs immediately upon the launch of trading.¹⁰

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2002-91 and should be submitted by December 4, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-28743 Filed 11-12-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46776; File No. SR-CBOE-2002-50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Retail Automatic Execution System Log-On Requirements for Market-Makers

November 6, 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 August 28, 2002, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. On October 25, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 8.16 to eliminate the current Retail Automatic Execution System ("RAES") log on requirements for market-makers. Below is the text of

the proposed rule change. Proposed new text is italicized and proposed deleted text is [bracketed].

* * * * *

RAES Eligibility in Option Classes Other Than DJX, OEX and SPX

RULE 8.16 (a). No Change

[(b) In option classes designated by the appropriate Market Performance Committee, any Market-Maker who has logged on RAES at any time during an expiration month must log on the RAES system in that option class whenever he is present in that trading crowd until the next expiration.]

[(c)](b) Notwithstanding the limitations in Paragraphs (a)(iii) and (a)(iv) above, if there is inadequate RAES participation in a particular options class, Floor Officials of the appropriate Market Performance Committee may require Market-Makers who are members of the trading crowd, as defined in Rule 8.50 to log on RAES absent reasonable justification or excuse for non-participation or may allow Market-Makers in other classes of options to log on RAES in such classes.

[(d)] (c) Members who fail to abide by the foregoing requirements may be subject to disciplinary action under, among others, Rule 6.20 and Chapter XVII of the Exchange Rules. Such failure may also be the subject of remedial action by the appropriate Market Performance Committee, including but not limited to suspending a member's eligibility for participation on RAES and such other remedies as may be appropriate and allowed under Chapter VIII of the Exchange Rules.

* * * Interpretations and Policies:

.01 No Change.

.02 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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

⁹ See note *supra*.

¹⁰ For purposes only of accelerating the operative date of this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange submitted a new Form 19b-4, which replaces and supersedes the original filing in its entirety.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Current CBOE Rule 8.16 outlines the requirements with which a market-maker must comply in order to participate on RAES. Among the requirements, any market-maker who has logged on to RAES at any time during an expiration month must log on to the RAES system in that option class whenever he is present in that trading crowd until the next expiration. After assessing the impact of the RAES log on requirement, the Exchange believes that it no longer serves the purpose for which it was created, *i.e.*, encouraging greater market-maker participation on RAES. Current CBOE Rule 8.16 limits participation in an all-or-none fashion. As a result, the Exchange seeks to remove the log on requirement in its entirety in order to encourage market-makers to log onto RAES to the extent that their business models permit. The Exchange believes this rule change is consistent with the recent changes to Rule 6.87 of the log on requirements of the Pacific Exchange, Inc.⁴

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

The CBOE has requested that the Commission waive the 30-day operative delay.⁹ The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the notice requirement and acceleration of the operative date will permit the CBOE to implement the proposed rule change without undue delay. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ The CBOE did not specifically request the Commission to waive the 5-day pre-filing requirement. However, because the original filing was filed more than 5 days before Amendment No. 1, which converted the filing to a non-controversial filing pursuant to Section 19b(3)(A) of the Act and Rule 19b-4(f)(6) thereunder, the Commission finds that the 5-day pre-filing requirement has been satisfied.

¹⁰ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-2002-50 and should be submitted by December 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46774; File No. SR-NQLX-2002-2]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Nasdaq Liffe Markets, LLC Relating to Listing Standards for Security Futures Products

November 5, 2002.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-7 under the Act,² notice is hereby given that on October 30, 2002, Nasdaq Liffe Markets, LLC ("NQLX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in items I and II below, which items have been prepared by NQLX. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NQLX also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"), together with a written certification under section 5c(c) of the Commodity Exchange Act³ ("CEA") on October 30, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rules

NQLX is proposing to adopt rules on listing standards for security futures contracts to comply with the requirements under section 6(h)(3) of

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ 7 U.S.C. 7a-2(c).

⁴ Securities Exchange Act Release No. 45894 (May 8, 2002), 67 FR 34745 (May 15, 2002).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

the Act⁴ and the criteria under section 2(a)(1)(D)(i) of the CEA,⁵ as modified by joint orders of the Commission and the CFTC.⁶

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

NQLX has prepared statements concerning the purpose of, and statutory basis for, the proposed rules, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in item IV below. These statements are set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

1. Purpose

The Commodity Futures Modernization Act of 2000⁷ ("CFMA") lifted the ban on trading futures on single stocks as well as narrow-based stock indices ("security futures"). As part of this new regulatory framework, the CFMA amended the Act and the CEA by establishing the criteria and requirements for listing standards regarding the category of securities on which security futures can be based. NQLX has adopted these proposed rules on listing standards to comply with the requirements under section 6(h)(3) of the Act and the criteria under section 2(a)(1)(D)(i) of the CEA,⁸ as modified by joint orders of the Commission and the CFTC.

NQLX is a board of trade, as that term is defined by the CEA,⁹ and has been designated as a contract market by the CFTC and its designation has not been suspended by order of the CFTC.¹⁰ On August 26, 2002, NQLX registered with the SEC as a national securities exchange solely for the purposes of trading security futures.¹¹ NQLX meets

each of the requirements for listing standards and conditions for trading security futures.¹² Specifically:

(1) Except as otherwise provided in a rule, regulation, or order issued jointly by the SEC and CFTC, NQLX's proposed rules 902(b)(2) and 902(d)(2), which are part of this filing, require that any security underlying an NQLX security future (including each component security for a narrow-based security index) must be registered pursuant to section 12 of the Act.¹³

(2) For any security futures listed by NQLX that are not cash-settled, NQLX has arranged with the Options Clearing Corporation (which is a clearing agency registered pursuant to section 17A¹⁴ of the Act) for the payment and delivery of the security or securities underlying the security futures listed on NQLX.¹⁵

(3) NQLX believes that its proposed rules 902 and 903, which are listing standards for physically-settled security futures and are part of this filing, are no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association.¹⁶

(4) Except as otherwise provided in a rule, regulation, or order issued jointly by the SEC and CFTC, NQLX's proposed rule 902(b)(1), which is a part of this filing, requires that the security future be based upon a common stock or other equity securities as the SEC and CFTC jointly determine appropriate, which currently include American Depository Receipts, shares of exchange-traded funds, trust-issued receipts, and shares of closed-end funds.¹⁷

(5) NQLX, through its clearing and settlement relationship with the Options Clearing Corporation, will have in place—within 165 days after the SEC and CFTC jointly publish in the **Federal Register** a compliance date—provisions for linked and coordinated clearing with other clearing agencies that clear security futures, which will permit security futures to be purchased on one market and offset on another market that trades the same product.¹⁸

(6) NQLX's proposed rule 328, which is part of this filing, only allows a

broker-dealer subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a)¹⁹ of the Act to effect transactions in NQLX security futures.²⁰

(7) Section 4j of the CEA,²¹ and CFTC rule 41.27²² promulgated thereunder, do not apply to NQLX because NQLX operates an electronic trading system that does not provide market participants with a time or place advantage or the ability to override a predetermined algorithm.²³

(8) NQLX believes that its proposed rules 902 and 903 meet the requirement that trading in the security futures are not readily susceptible to manipulation of their price, nor to causing or being used to cause the manipulation of the price of the underlying security, options on such security, or options on a group or index including such securities.²⁴ In addition, NQLX proposed rule 304(c)(1), which is part of this filing, prohibits various manipulative and improper practices, including effecting a transaction in, or inducing the purchase or sale of, any NQLX contract through any manipulative, deceptive, or fraudulent device or contrivance. Proposed rule 304(c)(2) through (9), which are part of this filing, also specifically prohibits price manipulation or cornering the market, wash transactions, accommodation transactions, front-running, trading ahead, cherry picking, withdrawing, withholding, or disclosing a customer's order for the benefit of another person, taking advantage of a customer's order for the benefit of another person, and compensation trades.²⁵

(9) As to coordinated surveillance, NQLX's proposed rule 207, which is part of this filing, gives NQLX the authority to enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance with other markets on which security futures trade, any market on which any security that underlies the security futures trade, and any other markets on which any related securities trade. Proposed rule 207 also allows NQLX to enter into any arrangement with, and provide information to, any person or body (including, without limitation, the

⁴ 15 U.S.C. 78f(h)(3).

⁵ 7 U.S.C. 2(a)(1)(D)(i).

⁶ See Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act release no. 44725 (August 20, 2001) and Joint Order Granting the Modification of Listing Standards Requirements (Exchange Traded Funds, Trust Issued Receipts and shares of Closed-End Funds), Securities Exchange Act release no. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002).

⁷ Pub. L. 106-554, 114 stat. 2763 (2000).

⁸ 15 U.S.C. 78f(h)(3); 7 U.S.C. 2(a)(1)(D)(i).

⁹ 7 U.S.C. 1a(2).

¹⁰ See In the Matter of the Application of Nasdaq Liffe Markets, LLC for Designation as a Contract Market, CFTC Final Order of Designation (May 24, 2002); see also In the Matter of the Application of Nasdaq Liffe, LLC Futures Exchange for Designation as a Contract Market, CFTC Order of Conditional Designation (August 21, 2001).

¹¹ 15 U.S.C. 78f(g)(1).

¹² 15 U.S.C. 78f(h)(2) and (3).

¹³ 15 U.S.C. 78f(h)(3)(A); see also 15 U.S.C. 78l.

¹⁴ 15 U.S.C. 78qA.

¹⁵ 15 U.S.C. 78f(h)(3)(B).

¹⁶ 15 U.S.C. 78f(h)(3)(C).

¹⁷ 15 U.S.C. 78f(h)(3)(D); see Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act release no. 44725 (August 20, 2001) and Joint Order Granting the Modification of Listing Standards Requirements (Exchange Traded Funds, Trust Issued Receipts and Closed-End Funds), Securities Exchange Act release no. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002).

¹⁸ 15 U.S.C. 78f(h)(3)(E).

¹⁹ 15 U.S.C. 78oA(a).

²⁰ 15 U.S.C. 78f(h)(G).

²¹ 7 U.S.C. 4j.

²² 17 CFR 41.45(b)(2).

²³ 17 CFR 41.27(b)(2); see also Regulation to Restrict Dual Trading in Security Futures Products, (March 1, 2002), 67 FR 11223, 11225-11226 (March 13, 2002).

²⁴ 15 U.S.C. 78f(h)(3)(H).

²⁵ NQLX proposed rule 304(c)(2) through (9).

CFTC, SEC, National Futures Association, National Association of Securities Dealers, Inc. (“NASD”), any self-regulatory organization, any exchange, market, clearing organization, the Intermarket Surveillance Group, or foreign regulatory authority) that NQLX believes exercises a legal or regulatory function or a function comprising or associated with the enforcement of a legal or regulatory function. In addition to proposed rule 207, NQLX is an affiliate member of the Intermarket Surveillance Group and is a signatory of an information-sharing agreement and its related addendum for security futures (dated October 18, 2002), which sets forth the agreement entered into between and among markets on which security futures are traded, any market on which any security underlying the security futures are traded, and other markets on which any related security is traded for coordinated surveillance to detect manipulation and insider trading.²⁶

(10) NQLX relies on its automated trading system (“ATS”) combined with specified proposed rules requiring the recording of trade information as well as books and records and record retention requirements to facilitate its obligation to conduct and coordinate market surveillance. As part of its ATS, NQLX will use a modified version of the LIFFE CONNECT™ trading platform, which is the same trading platform currently used by the London International Financial Futures and Options Exchange (“LIFFE”) to trade financial derivatives. The ATS is a fully-transparent, open architecture trading system that users access through non-NQLX front-end trading applications. The ATS performs price reporting and dissemination, displaying the prices of trades executed in the matching engine together with the aggregate size of all orders to buy and sell above and below the market, updated on a real-time basis. In addition, the ATS creates audit trails for trades executed within the central order book, as well as three discrete types of trades allowed to be executed outside the central order book (*i.e.*, certain cross transactions for market makers, block trades, and exchange for physical trades).

As to market surveillance, NQLX’s capabilities are two-fold: First, under the oversight and supervision of NQLX, designated LIFFE staff at NQLX’s ATS will conduct real-time, front-line market surveillance. This includes monitoring real-time trading activity for compliance with NQLX’s rules. Second, under the oversight and supervision of NQLX,

NASD will conduct post-trade market surveillance for NQLX. Post-trade, NASD will monitor all trading activity to detect actual and potential abusive trading activities, unusual trading patterns, and violations of NQLX’s rules and federal law using proven systems currently used by NASD for market surveillance of The NASDAQ Stock Market, Inc.

As to the audit trail itself, it begins with NQLX assigning one or more unique individual trading mnemonics (“ITMs”) to specified responsible persons at each member. Orders will not be accepted into the ATS without an ITM identifier attached to the order. And, pursuant to NQLX’s rules, the responsible persons must have the ability to identify immediately for NQLX the source of all orders submitted under any ITM assigned to the responsible persons.²⁷ In turn, NQLX’s proposed rule 408, which is part of this filing, specifies the types of information that each order entered into the ATS must contain, including customer type indicator (or “CTI” code) as prescribed by CFTC regulation; customer account number or identifier; clearing account indicator; the exchange contract; delivery or expiration month; quantity; buy or sell; price or price limit or range; put or call and exercise price (if applicable); open or close position indicator (if applicable); order instructions (*e.g.*, good “til cancelled, minimum volume, etc.) (if applicable); strategy type indicator (if applicable); and code indicator for a cross transaction, block trade, or exchange for physical trade (if applicable).

The three discrete types of transactions that are allowed under NQLX’s rules to be executed outside of the central order book (*i.e.*, certain cross transactions for market makers, block trades, and exchange for physical trades) are still submitted to the ATS and, in turn, captured by the audit trail. NQLX proposed rules 418(d), 419(g) and 420(b), which are part of this filing, indicate the types of information that must be submitted to the ATS for certain cross transactions for market makers, block trades, and exchange for physical trades, respectively.

In addition to the audit trail created by the ATS, NQLX has several other proposed rules that will enhance market surveillance by (1) requiring members to make and maintain adequate books and records (proposed rules 320 and 321), (2) giving NQLX the authority to require the recording of conversations (proposed rule 322), (3) giving NQLX the authority to require the filing of

daily trading information (proposed rule 324), and (4) requiring the reporting of reportable positions (proposed rule 325).²⁸

(11) NQLX proposed rule 425, which is part of this filing, requires NQLX to halt trading of a security futures contract based on a single security during any regulatory halt (as defined in CFTC regulation 41.1(l)²⁹ and SEC rule 240.6h–1(a)(3)³⁰) imposed on the underlying security. Proposed rule 425 also requires NQLX to halt trading of a security futures contract based on a narrow-based security index (as defined by section 1a(25)³¹ of the CEA and section 3(a)(55)³² of the Act) during any regulatory halt of one or more underlying securities that constitute 50 percent or more of the market capitalization of the narrow-based security index. NQLX also will have procedures in place to halt trading of security futures that are based on single securities during regulatory halts imposed on the underlying security. Before commencing trading in any narrow-based security indices, NQLX will have procedures in place to halt trading in the narrow-based security indices during any regulatory halt of one or more underlying securities that constitute 50 percent or more of the market capitalization of the narrow-based security index.

(12) NQLX has submitted proposed customer margin rules for publication and approval by the SEC,³³ which it believes complies with the provisions jointly established by the SEC and CFTC pursuant to section 7(c)(2)(B)³⁴ of the Act and set forth in SEC rules 400 through 406³⁵ and CFTC rules 41.43 through 41.49.³⁶ The SEC has approved NQLX’s customer margin rules.³⁷

2. Statutory Basis

NQLX files these proposed rules pursuant to section 19(b)(7) of the Act.³⁸ NQLX believes that these rules are necessary to implement the requirements of the CFMA, including the requirement that trading in a listed security futures is not readily susceptible to manipulation of its price

²⁸ NQLX proposed rules 320, 321, 322, 324 and 325 are part of this filing.

²⁹ 17 CFR 41.41.1(l).

³⁰ 17 CFR 240.6h–1(a)(3).

³¹ 7 U.S.C. 1a(25).

³² 15 U.S.C. 78c(a)(55).

³³ Securities Exchange Act release no. 46548 (September 25, 2002), 67 FR 61361 (September 30, 2002).

³⁴ 15 U.S.C. 78g(c)(2)(b).

³⁵ 17 CFR 240.400 through 406.

³⁶ 17 CFR 41.42 through 41.49.

³⁷ Securities Exchange Act release no. 46771 (November 5, 2002).

³⁸ 15 U.S.C. 78s(b)(7).

²⁶ 15 U.S.C. 78f(h)(1).

²⁷ See NQLX rule 309(a) and (b).

nor to causing or being used to manipulate the price of the underlying security, options on the security, or options on a group or index including the security.³⁹ NQLX also believes that these proposed rules are necessary to establish listing standards that: (1) Will foster the development of fair and orderly markets in security futures, (2) are necessary or appropriate in the public interest, and (3) are consistent with the protection of investors.

NQLX believes that its proposed rules comply with the requirements under section 6(h)(3) of the Act and the criteria under section 2(a)(1)(D)(i) of the CEA,⁴⁰ as modified by joint orders of the Commission and the CFTC. In addition, NQLX believes that its proposed rules are consistent with the provisions of section 6 of the Act,⁴¹ in general, and section 6(b)(5) of the Act,⁴² in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NQLX does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on Proposed Rules Received From Members, Participants, or Others

NQLX neither solicited nor received written comment on the proposed rules.

III. Date of Effectiveness of the Proposed Rules and Timing of Commission Action

Concurrent with the filing of the proposed rule change with the SEC, NQLX has filed a written certification with the CFTC under section 5c(c)⁴³ of the CEA and CFTC regulation part 38.4⁴⁴ in which NQLX certifies that its filed listing standards in proposed rules 902 and 903 comply with the CEA. While proposed rule 902 and 903 are effective the day after their filing with the CFTC, NQLX intends to implement these rules immediately before its market launch.

Within 60 days of the date of effectiveness of the proposed rules, the

Commission, after consultation with the CFTC, may summarily abrogate the proposed rules and require that the proposed rules be refiled in accordance with the provisions of section 19(b)(1) of the Act.⁴⁵

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rules conflict with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

Comments also may be submitted electronically to the following e-mail address: rule-comments@sec.gov. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules 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 these filings will also be available for inspection and copying at the principal office of NQLX. Electronically submitted comments will be posted on the Commission's internet website (<http://www.sec.gov>). All submissions should refer to file no. SR-NQLX-2002-02 and should be submitted by December 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-28746 Filed 11-12-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46763; File No. SR-Phlx-2002-04]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendments No. 1 Through 7 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 8 Relating to Electronic Interface With AUTOM for Specialists and Registered Options Traders

November 1, 2002.

I. Introduction

On January 15, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder² a proposed rule change relating to an electronic interface with the Exchange's Automated Options Market ("AUTOM")³ for specialists and Registered Options Traders ("ROTs").⁴ On March 6, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ On March 14, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.⁶ On March 26, 2002, the Exchange filed Amendment No. 3 to the proposed rule change.⁷ On April 2, 2002, the Exchange filed Amendment No. 4 to the proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature ("AUTO-X"). Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

⁴ A ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Phlx rule 1014(b).

⁵ See letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 5, 2002 ("Amendment No. 1").

⁶ See letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 13, 2002 ("Amendment No. 2").

⁷ See letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 25, 2002 ("Amendment No. 3").

³⁹ See Section 6(h)(3)(H) of the Exchange Act, 5 U.S.C. 78f(h)(3)(H).

⁴⁰ 15 U.S.C. 78f(h)(3); 7 U.S.C. 2(a)(1)(D)(i).

⁴¹ 15 U.S.C. 78f.

⁴² 15 U.S.C. 78f(b)(5).

⁴³ 7 U.S.C. 7a-2(c).

⁴⁴ 17 CFR 38.4.

⁴⁵ 15 U.S.C. 78s(b)(1).

⁴⁶ 17 CFR 200.30-3(a)(12).

change.⁸ On May 16, 2002, the Exchange filed Amendment No. 5 to the proposed rule change.⁹ On June 12, 2002, the Exchange filed Amendment No. 6 to the proposed rule change.¹⁰ On June 19, 2002, the Exchange filed Amendment No. 7 to the proposed rule change.¹¹

The proposed rule change and Amendments No. 1–7 were published for comment in the **Federal Register** on June 27, 2002.¹² No comments were received on the proposed rule change or Amendments No. 1–7. The Exchange filed Amendment No. 8 to the proposed rule change on November 1, 2002.¹³

II. Description of the Proposal

The Exchange proposes to amend Phlx rule 1080 to enable a ROT or specialist to improve the Phlx bid or offer by enabling ROTs and specialists to place limit orders on the electronic limit order book¹⁴ through an electronic interface with AUTOM (“Price Improving ROT/Specialist”).

Currently, Phlx rule 1080 provides that, generally, only agency orders¹⁵

may be entered into AUTOM and only Exchange options specialists may access the limit order book electronically. A Phlx ROT (or a floor broker on the ROT’s behalf) may only place an order for an ROT’s account on the limit order book maintained by the specialist by requesting the specialist to do so. In addition, Phlx ROTs cannot improve the Phlx’s displayed bid or offer, except by asking the specialist to do so. Specifically, under existing Phlx rules, Phlx ROTs are able to improve the Phlx market with respect to a given option series only by verbally announcing their trading interest in a loud and audible fashion. The specialist is then required by Phlx rules to reflect this trading interest in the displayed quote.

The proposal would limit the need for specialist involvement by providing that on-floor orders for the proprietary account(s) of ROTs, up to 1,000 contracts, are eligible for delivery via AUTOM, through the use of Exchange approved proprietary systems. To be displayed, on-floor orders for the proprietary accounts of ROTs delivered via AUTOM would be required to be for a minimum size of, at least, the lesser of: (i) The AUTO–X guarantee for the option that is the subject of such an order, or (ii) 20 contracts.¹⁶

Proposed paragraph (g) of Phlx rule 1014 provides that a Price-Improving ROT/Specialist that enters an order through an electronic interface with AUTOM that results in an improvement in the then-prevailing market disseminated by the Exchange (*i.e.*, raises the bid or lowers the offer) must announce, loudly and audibly in the crowd, that he has improved the displayed market. The proposal also requires that an ROT or specialist that posts a bid or offer through electronic interface with AUTOM, and subsequently elects to cancel such a bid or offer, cancel such bid or offer through the electronic interface.

In addition, the proposal would allow specialists to improve the prevailing market by placing price-improving orders via a similar electronic interface with AUTOM as that used by ROTs. The use of a specific electronic interface is intended to distinguish the specialists’ price improving orders under the instant proposed rule from their general two-sided quoting obligations, including quotes generated by Auto-Quote or specialized quote feed.¹⁷

Inbound orders eligible for execution against ROT or specialist orders entered into AUTOM via electronic interface would be executed by the specialist and allocated, initially, by the individual responsible for allocating trades under existing Exchange rules.¹⁸ No later than January 2004, the Exchange will modify the AUTO–X system¹⁹ and will automatically execute incoming orders against ROT and specialist orders that improve the disseminated price, as well as orders that match such price-improving orders.

Price-Improving, “Matching,” and Special Parity Rule

The other crowd participants (including the specialist) may match a price-improving order through an electronic interface with AUTOM, but must loudly and audibly announce their intention to do so, as well as their size. If Auto-Quote or Specialized Quote Feed matches a price-improving order, the specialist and crowd participants on that quote would be deemed to be matching the price-improving order. In such a situation, the “Special Allocation” would entitle the Price Improving ROT/Specialist to receive the largest number of contracts among all crowd participants that have matched a price-improving order, subject to size.²⁰

by-passing the Exchange’s Auto-Quote System. See Phlx rule 1080, Commentary. 01(c).

¹⁸ Currently, under the Exchange’s Option Floor Procedure Advice (“OFPA”) F–2, the largest participant in a trade is responsible for allocating contracts to crowd participants. In a separate rule proposal, the Exchange has proposed amendments to OFPA F–2 and rule 1014(g) regarding who is responsible for allocating a trade. Under that proposal, if a trade involved a floor broker, the floor broker would be responsible for allocating contracts among crowd participants but could delegate the responsibility to the specialist or an assistant to the specialist under the specialist’s direct supervision (“Assistant”), provided that the specialist (or Assistant) agrees to be responsible for allocating the trades. In all other cases where the specialist is a participant, the specialist or Assistant would allocate the trade. If neither the specialist nor floor broker is involved, but there is more than one buyer or seller, the largest participant would be responsible for allocating trades. If neither the specialist nor floor broker is involved, and there is only one buyer and seller, the seller would be responsible for allocating trades. See File no. SR–Phlx–2001–28.

¹⁹ The Exchange will deploy the modified system over a 15-month period. Proposed commentary .04 to Phlx rule 1080.

²⁰ Proposed Phlx rule 1014(g)(i)(B)(1) would entitle a Price Improving ROT/Specialist to participate in at least 60% of the contracts in the transaction if matched by one single crowd participant. If the Price Improving ROT/Specialist’s order is matched by two or more crowd participants (including the specialist), the Price Improving ROT/Specialist would be entitled to participate in at least 40% of the contracts in the transaction; a matching specialist would be entitled to participate in 30%, and other crowd participants on parity with the Price Improving ROT/Specialist would be entitled

Continued

⁸ See letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 1, 2002 (“Amendment No. 4”).

⁹ See letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 15, 2002 (“Amendment No. 5”).

¹⁰ See letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 11, 2002 (“Amendment No. 6”).

¹¹ See letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 18, 2002 (“Amendment No. 7”).

¹² See Securities Exchange Act release No. 46095 (June 20, 2002), 67 FR 43372.

¹³ See letter from Richard S. Rudolph, Director and Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated October 31, 2002 (“Amendment No. 8”). In Amendment No. 8, the Phlx proposes to eliminate the language contained in proposed Phlx rule 1014(g)(i)(B)(5) regarding the use of “best efforts” in the allocation of orders. The Phlx has determined that the proposed language is unnecessary because the price-improving ROT’s identification information will be input into the system at the time the ROT’s order is placed on the limit order book and, therefore, will be available to the person responsible for the allocation of orders at the time that an execution occurs at that price.

¹⁴ The electronic “limit order book” is the Exchange’s automated specialist limit order book, to which all unexecuted limit orders routed to the Exchange through AUTOM are displayed on the basis of price-time priority. Orders not delivered through AUTOM also may be entered onto the limit order book. See Phlx rule 1080, commentary.02.

¹⁵ The Exchange has defined an agency order as any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. See, e.g., Phlx rule 229.02. See also, Securities Exchange Act release No. 40970 (January 25, 1999), 64 FR 4922 (February 1, 1999) (File No. SR–Phlx–98–44).

¹⁶ This requirement applies only to Phlx ROT and specialist orders entered via electronic interface.

¹⁷ A specialist may establish a specialized connection with AUTOM, known as a specialized quote feed, which enables the specialist to provide quotations based on a proprietary pricing model,

Any partial contracts would be rounded up in favor of the Price Improving ROT/Specialist. In no event would a Price Improving ROT/Specialist or crowd participant that matches a price-improving order be required to participate in a trade above that Price Improving ROT/Specialist's size.

The Special Allocation would remain in effect until: (1) The lesser of 20 contracts or the AUTO-X guarantee for the option that is the subject of the price-improving quote have been executed against the price-improving quotes eligible to receive an allocation; (2) the ROT or specialist who improved the price cancels the price-improving order; or (3) the original price-improving order is superseded by a new price-improving order, unless the new price-improving order is cancelled before at least one contract executes at the price of the new price-improving order.²¹ If any of those conditions are satisfied, the Special Allocation would no longer be in effect, and crowd members with orders that have not been filled would be considered to be on parity. If the specialist were one of the crowd members, the specialist would, consistent with applicable exchange rules, be entitled to receive the specialist guarantee.²²

Finally, the Exchange represents that it has determined to develop a proposal for an alternative model for ROT access, which would involve giving ROTs the ability to electronically post their own quotations in competition with the specialist and to have their own quotation generation models, as opposed to having their electronic access be limited to sending limit orders on a strike-by-strike basis.²³

to participate in 30% of the contracts in the transaction, in the aggregate. If matched by two or more crowd participants (but not the specialist), the Price Improving ROT/Specialist would be entitled to participate in 40% of the contracts in the transaction, and the other crowd participants would be entitled to participate in 60% of the transaction, in the aggregate.

²¹ See proposed Phlx rule 1014(g)(i)(B)(2). The Exchange represents that the purpose of this third condition is to eliminate the possibility that a crowd participant could, by placing and then immediately canceling a price-improving order, cause a Price Improving ROT/Specialist to lose its entitlement under the Special Allocation.

²² Pursuant to Phlx rule 1014(g)(ii), the specialist is entitled to receive an allocation of up to 40% of an incoming order, when the specialist is on parity with the best quote.

²³ Under this approach, the Exchange would adopt a new trade allocation rule similar to that of the International Securities Exchange rule 713. Subject to approval under the governance requirements set forth in the Exchange's rules and in the Act, the Exchange would submit the proposal for Commission approval as the permanent solution to compliance with section IV.B.h.(i)(aa) of the Settlement Order.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 8, including whether Amendment No. 8 to 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, N.W., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2002-04 and should be submitted by December 4, 2002.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended by Amendments No. 1 through 8, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁴ The Commission finds that the proposed rule change, which provides a mechanism for members of the trading crowd who improve the disseminated market, or match a price-improved market, to be directly allocated Auto-X order flow, is designed to remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade, and in general, to protect investors and the public interest, is consistent with section 6(b)(5) of the Act.²⁵

The Commission believes that the proposed rule change, once fully implemented,²⁶ should substantially enhance incentives to quote competitively by automating the process by which trading crowd participants can

improve the disseminated quote and by ensuring that the price-improving ROT is rewarded with incoming order flow.²⁷ Specifically, the Phlx's proposal will allow ROTs to improve the disseminated quote by placing limit orders directly on the limit order book through an electronic interface with Exchange systems. Moreover, the Phlx has represented that it has determined to develop the capability to allow ROTs to electronically post their own quotations in competition with the specialist.

In addition, the Phlx proposal will ensure that price-improving ROTs are rewarded with incoming order flow. The Phlx proposal provides an incentive to improving the disseminated quote by providing the price-improving ROT with an execution of at least 40%, up to 20 contracts, of an incoming order, regardless of whether other market participants, including the specialist, match the price-improving order. For these reasons, the Commission believes that the Phlx's proposal, once fully implemented, will satisfy section IV.B.h.(i)(aa) of the Settlement Order.

Finally, the Commission finds good cause for approving Amendment No. 8 to the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**. Amendment No. 8 eliminates language requiring a person responsible for the allocation of efforts to use best efforts to allocate orders to price-improving ROTs. The Exchange represents that this language is unnecessary because Phlx's system would identify the source of a price-improving order placed on the limit order book. If, for some reason, a specialist experienced any difficulty allocating an order to a price-improving ROT, the identity of the price-improving ROT could readily be determined by the system. Accordingly, there are no novel issues of regulatory concern and the Commission finds good cause for approving Amendment No. 8 to the proposed rule change on an accelerated basis.

²⁷ The Exchange filed this proposed rule change pursuant to the requirements of section IV.B.h.(i)(aa) of the Commission's September 11, 2000, Order Instituting Administrative Proceedings Pursuant to section 19(h)(1) of the Act, which required the Phlx (as well as other floor-based options exchanges) to adopt new, or amend existing rules to substantially enhance incentives to quote competitively and substantially reduce disincentives to act competitively ("Settlement Order"). See Securities Exchange Act release no. 43268 (September 11, 2000), Administrative Proceeding file no. 3-10282.

²⁴ In approving the proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ The Phlx plans to file for Commission approval a plan to fully implement the proposed rule change. See letter from Lanny A. Schwartz, Executive Vice President and General Counsel, Phlx, to Elizabeth King, Associate Director, Commission, dated October 31, 2002.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act²⁸ that the proposed rule (SR-Phlx-2002-04), as amended by Amendments No. 1 through 7, is approved and Amendment No. 8 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-28747 Filed 11-12-02; 8:45 am]

BILLING CODE 8010-01X-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collection and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collections of information was published on July 24, 2002, page 48501.

DATES: Comments must be submitted on or before December 13, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267-9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. *Title:* Flight Engineers and Flight Navigators—FAR Part 63.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120-0007.

Forms(s): FAA Form 8400-3, Application for an Airman Certificate and/or Rating.

Affected Public: A total of 2,760 airmen.

Abstract: 49 U.S.C. 44902(a), 44702(a)(2), and 44707(1) authorize issuance of airman certificates and

provide for examination and rating of flying schools. FAR 63 prescribes requirements for flight navigator certification and training course requirements for these airmen. Information collected is used to determine certification eligibility.

Estimated Annual Burden Hours: An estimated 1,416 hours annually.

2. *Title:* ACSEP Evaluation Customer Feedback Report.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120-0605.

Forms(s): FAA Form 8100.7.

Affected Public: A total of 450 certified aircraft suppliers.

Abstract: The information will be collected from holders of FAA production approvals and selected suppliers to obtain their input on how well the agency is performing the administration and conduct of the Aircraft Certification Systems Evaluation Program (ACSEP). The agency will use the information as a customer service standard and to continually improve ACSEP.

Estimated Annual Burden Hours: An estimated 450 hours annually.

3. *Title:* Additional Flight Data Recorder Requirements for Certain Boeing 737 Airplanes.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120-0651.

Forms(s): NA.

Affected Public: A total of 1,200 owners/operators of Boeing 737 airplanes.

Abstract: This rule requires the recording of additional operating parameters for certain Boeing 737 airplanes. These additional parameters allow the NTSB and FAA to investigate and establish causes for accidents so that the aviation industry can make appropriate modifications to prevent future incidents.

Estimated Annual Burden Hours: An estimated 1 hour annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the

burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on November 4, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF-100.

[FR Doc. 02-28827 Filed 11-12-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request to Release Airport Land at Hilo and Kahului Airports, Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport land.

SUMMARY: The FAA proposes to rule and invites public comment on the release of airport land needed to comply with the Hawaii Department of Transportation's (HDOT) obligations under the Tri-Party Agreement of 1984. The purpose of the Tri-Party Agreement was to extinguish lawsuits pending in state court that contested HDOT's use of certain lands for non-airport purposes. The Agreement called for HDOT to exchange land and money to compensate for subject land. The FAA objected to the transfer of land needed for airport or wildlife mitigation purposes. To resolve this matter, HDOT has proposed that other non-aeronautical use land be substituted for those parcels identified in the Tri-Party Agreement.

DATES: Comments must be received on or before December 13, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Ronnie V. Simpson, Manager, FAA Honolulu Airports District Office, 300 Ala Moana Blvd., Room 7-128, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Mr. Ronnie V. Simpson, Manager, Honolulu Airports District Office, 300 Ala Moana Blvd., Room 7-128, Honolulu, HI 96813, Telephone: (808) 541-1232. The request to release airport property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).

21), Pub. L. 10–181 (Apr. 5, 2000; 114 Stat. 61), requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

The following is a brief overview of the request:

The state agencies have agreed to substitute new airport parcels for those identified in the Tri-Party Agreement. The following is a description of the parcels proposed for release:

(a) HDOT will convey 22.419 acres at Kahului, subject to an avigation easement, to Department of Land and Natural Resources (DLNR). The land is presently occupied by state agencies that are using it for non-aeronautical purposes.

(b) At Hilo, HDOT and DLNR will each swap 1.082 acres. Presently, HDOT airport land is occupied by a state agency and the DLNR land is occupied by the FAA/National Weather Service Station. By swapping land of equal size and value, HDOT will acquire 1.082 acres of aviation-use land and DLNR will acquire 1.082 acres, subject to an avigation easement, of non-aeronautical use land.

(c) HDOT will convey 41.067 acres, subject to avigation easement, at Hilo to DLNR. The land consists of a quarry and the former Hawaii National Guard site, that cannot be used for aeronautical purposes since it is isolated from the airport by a major roadway. It has never been used and will not be used for future aeronautical purposes.

(d) HDOT will convey another 16.941 acres, subject to avigation easement, of the quarry site at Hilo to DLNR. The state will pay HDOT fair market value of \$2,140,000, none of which is airport revenue, for the additional land. The additional 16.941 acres, along with the 41.067 acres above, represent the entire quarry and Hawaii National Guard site that has never been used for aeronautical purposes and which HDOT does not need for airport purposes.

Issued in Hawthorne, California, on October 30, 2002.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 02–28828 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–Ma

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Artisan Liens on Aircraft; Recordability

AGENCY: Federal Aviation Administration

ACTION: Notice.

SUMMARY: This notice of legal opinion is issued by the Aeronautical Center Counsel to provide legal advice to the Aircraft Registration Branch, Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma, also identified as the FAA Aircraft Registry. Since December 17, 1981, the Aeronautical Center Counsel has issued opinions in the **Federal Register** of those states from which artisan liens will be accepted for recordation by the FAA Aircraft Registry. This opinion is to advise interested parties of the addition of the States of Louisiana, Massachusetts, and Rhode Island to that list.

ADDRESSES: Copies of prior opinions on the recordability of artisan liens from states which have statutes authorizing their recording may be obtained from: Aeronautical Center Counsel, AMC–7, P.O. Box 25082, Oklahoma City, OK 73125–4904.

FOR FURTHER INFORMATION CONTACT: Joseph R. Standell, Aeronautical Center Counsel, address above, or call (405) 954–3296.

SUPPLEMENTARY INFORMATION: In 46 FR 61528, December 17, 1981, the Federal Aviation Administration, Mike Monroney Aeronautical Center, published its legal opinion on the recordability of artisan liens, with the identification of those states from which artisan liens would be accepted. In 49 FR 17112, April 23, 1984, we advised that Florida, Nevada, and New Jersey had passed legislation that, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In 51 FR 21046, June 10, 1986, we advised that Minnesota and New Mexico had passed legislation that, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In 54 FR 23716, June 23, 1988, we advised that Missouri had passed legislation that, in our opinion, allows the Aircraft Registry to accept artisan liens from that state. In 54 FR 38584, September 19, 1989, we advised that Texas was identified as a state from which artisan liens will be accepted. In 54 FR 51965, October 17, 1989, we advised that North Dakota was identified as a state from which artisan liens will be accepted. In 55 FR 31938, August 6, 1990, we advised that Michigan and Tennessee was identified as states from which artisan liens will be accepted. In 56 FR 27989, June 18, 1991, we advised that Arizona was identified as a state which artisan liens will be accepted. In 56 FR 36189–36190, July 31, 1991, we advised that Iowa was identified as a state from which artisan

liens will be accepted. In 58 FR 50387, September 27, 1993, we advised that the states of California (General Aviation only), Connecticut, Ohio, and Virginia were identified as states from which artisan liens will be accepted.

The purpose of this opinion is to advise interested parties that in addition to those states previously identified, the states of Louisiana, Massachusetts and Rhode Island are identified as states from which artisan liens will be accepted. Massachusetts was inadvertently omitted from the previous Notice published in 58 FR 50387, September 27, 1993, however, despite that omission FAA's Aircraft Registry has accepted and recorded artisan liens filed pursuant to Massachusetts law.

The complete list of states from which artisan liens on aircraft will be accepted as of this date are: Alaska, Arizona, Arkansas, California (General Aviation Only), Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virgin Islands, Virginia, Washington, Wyoming.

Issued in Oklahoma City on October 21, 2002.

Joseph R. Standell,

Aeronautical Center Counsel.

[FR Doc. 02–28830 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Supplemental Part 150 Study and Draft Environmental Assessment, Notice of Public Comment Period, and Notice of Public Hearing/Workshop for Proposed Noise Abatement Air Traffic Measures for the Toledo Express Airport Located in Toledo, OH

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of availability, notice of comment period, notice of public hearing/workshop.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that the 2002 Draft Supplemental Part 150 Study and Draft Environmental Assessment (EA) have been prepared and are available for public review and comment. The 2002 Draft Supplemental Part 150 Study is a

supplement to the 1999 Part 150 Study Update. The Draft EA assesses and discloses the environmental impacts of the proposed noise abatement air traffic measures recommended for implementation in the 2002 Draft Supplemental Part 150 Study and 1999 Part 150 Study Update. Written requests for the Draft Supplement and/or Draft EA may be directed to Mr. Paul Toth, Airport Director, Toledo Express Airport, 11013 Airport Highway, Swanton, OH 43558.

PUBLIC COMMENT PERIOD AND HEARING/WORKSHOP: The public comment period for the 2002 Draft Supplemental Part 150 Study and the Draft EA will begin on November 12, 2002 and will close on December 20, 2002. A Public Hearing/Workshop will be held on December 12, 2002 for both documents. The Hearing/Workshop will begin at 5:30 p.m. and last until 7:30 p.m. or until all interested people have spoken. The location for the Hearing/Workshop is the VFW Hall at 1950 S. Eber Road, Holland, Ohio. Interested Parties may address the 2002 Draft Supplemental Part 150 Study and/or the Draft EA in their comments at the Hearing/Workshop.

Copies of the Draft Supplement and Draft EA may be viewed during regular business hours at the following locations:

1. Toledo Express Airport, 11013 Airport Highway, Swanton, OH 43558.
2. Toledo-Lucas County Port Authority, One Maritime Plaza, Toledo, OH, 43604-1866.
3. Toledo-Lucas County Public Library, 1032 South McCord Road, Holland, OH 43528.
4. Swanton Public Library, 305 Chestnut Street, Swanton, OH 43558.
5. FAA, Great Lakes Region, 2300 E. Devon Ave., Des Plaines, IL 60018.
6. FAA, Detroit Airports District Office, Willow Run Airport, 8820 Beck Road, Belleville, MI 48111.

FOR FURTHER INFORMATION ON THE DRAFT SUPPLEMENTAL PART 150 STUDY CONTACT: Ms. Katherine Jones, FAA, Detroit Airports District Office, Willow Run Airport, 8820 Beck Road, Belleville, MI 48111. Ms. Jones may be contacted at (734) 487-7298.

FOR FURTHER INFORMATION ON THE DRAFT ENVIRONMENTAL ASSESSMENT CONTACT: Ms. Annette Davis, FAA, Great Lakes Region, Air Traffic Division, 2300 East Devon Avenue, Des Plaines, Illinois, 60018. Ms. Davis may be contacted at (847) 294-8091.

SUPPLEMENTARY INFORMATION: In 1991, the Toledo-Lucas County Port Authority (TLCPA) initiated a series of noise contour updates that were reflective of Burlington Air Express Global

operations. The reanalysis of the noise contours continued in 1994, 1995/1996 and 1999. None of these resulted in an approved contour from the FAA. A Part 150 Study Update was completed in 1999, but not approved. In 2002, a Supplemental Part 150 Study was prepared for the 1999 Part 150 Study Update to update existing and future noise exposure and determine if the recommended noise abatement air traffic measures and land use mitigation measures were still reasonable and feasible.

The Draft EA assesses the potential environmental impacts of the recommended noise abatement air traffic measures from the 2002 Supplemental Part 150 Study, which is a supplemental report to the 1999 Part 150 Study Update. The goal of the 1999 Noise Compatibility Plan (NCP) was to reduce noise impacts in the 65 DNL noise contour, as well as impacts in the 60-65 DNL noise contour. The noise abatement air traffic measures recommended in the 1999 NCP would have met that goal if they had been approved and implemented, because the measures would have directed aircraft over areas with the fewest number of people. The goal of the TLCPA to reduce noise impacts in the 65 DNL noise contour, as well as impacts in the 60-65 DNL noise contour, has not changed. The noise abatement air traffic measures would still meet this goal because the measures would continue to direct aircraft traffic over the most noise compatible areas. Therefore, the noise abatement air traffic measures are still feasible and reasonable.

Comments from interested parties on the 2002 Supplemental Part 150 Study or Draft EA are encouraged and may be presented at the Public Hearing/Workshop or may be submitted in writing to the TLCPA's consultant, Mr. Rob Adams, Landrum & Brown, Inc., 11279 Cornell Park Drive, Cincinnati, OH 45242. The comment period will close on December 20, 2002.

Issued in Des Plaines, Illinois on November 1, 2002.

Richard K. Peterson,

Acting Manager, Air Traffic Division, FAA, Great Lakes Region.

[FR Doc. 02-28826 Filed 11-12-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee on Air Carrier Operations Issues to receive and discuss the final report from the Extended Operations for Multi-engine Airplanes Working Group.

DATE: The meeting will be held on December 16, 2002, at 10:00 a.m.

ADDRESSES: The meeting will be held in Conference Room 833, Federal Office Building 10A (the "FAA Building"), 800 Independence Ave., SW., Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Office of Rulemaking, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267-9685; e-mail linda.l.williams@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee on Air Carrier Operations to be held on December 16, 2002.

The agenda will include a final report from the Extended Operations (ETOPS) for Multi-engine Airplanes Working Group. The final report of the working group was forwarded to the members of the Air Carrier Operations Issues Group on October 30, 2002, for review. The meeting on December 16, 2002, will constitute the final action of the ETOPS working group.

Attendance is open to the interested public but may be limited by the space available. Members of the public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

If you are in need of assistance or require a reasonable accommodation for

this event, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on November 6, 2002.

Matthew Schack,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 02-28835 Filed 11-12-02; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice To Intend To Rule on Application 03-02-C-00-ACY To Impose Only, Impose and Use and Use the Revenue From a Passenger Facility Charge (PFC) at Atlantic City International Airport, Egg Harbor Township, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice to intend to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose only, impose and use and use a PFC at Atlantic City International Airport under the provisions of the Aviation Safety and Capacity Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 13, 2002.

ADDRESSES: Comments on this Application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Dan Vornea, Project Manager, New York District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas Rafter, Airport Director, of the South Jersey Transportation Authority at the following address: Atlantic City International Airport, Civil Terminal #106, Egg Harbor Township, NJ 08234-9590.

Air carriers and foreign air carriers may submit copies of their written comments previously provided to South Jersey Transportation Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, Project Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530, Telephone No. (516) 227-

3812. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose only, impose and use and use a PFC at Atlantic City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 29, 2002 the FAA determined that the application to impose only, impose and use and use a PFC submitted by South New Jersey Transportation Authority was substantially completed within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 26, 2003.

The following is a brief overview of the application:

Application Number: 03-02-C-00-ACY.

Level of Proposed PFC: \$3.00.

Proposed Charge Effective Date: September 1, 2005.

Proposed Charge Expiration Date: June 1, 2006.

Total Estimated PFC Revenue: \$1,573,274.

Brief Description of Proposed Projects

- Rehabilitation of taxiway "B" Page 1 (Impose and Use).
- Construct Snow Equipment Building (Use).
- Acquire Snow Equipment (Impose and Use).
- Improve Terminal Building (Impose and Use).
- Improvements to Airport Security Systems Page 30 (Impose and Use).
- Construct Deicing Containment Facility (Impose).
- ASR-9 Radar Relocation (Use).
- Terminal Area Study (Impose and Use).
- Environmental Mitigation—Design Only (Impose).

Class or classes of air carriers which the public agency has requested not to be required to collect PFS's are: Non-Scheduled/On Demand Air Carriers with less than 1200 annual enplaned passengers filing FAA Form 1800-31.

Any person may inspect the Application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Office: 1 Aviation Plaza, Jamaica, NY 11434-4809.

In addition, any person may, upon request, inspect the application notice and other documents germane to the application in person at the South New

Jersey Transportation Authority, Atlantic City International Airport.

Issued in Garden City, New York on October 29, 2002.

Philip Brito,

Manager, NYADO, Eastern Region.

[FR Doc. 02-28833 Filed 11-12-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03-06-C-00-MLB To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Melbourne International Airport, Melbourne, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Melbourne International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 13, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration; Orlando Airports District Office; 5950 Hazelton National Drive; Suite 400; Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James C. Johnson, Executive Director of the Melbourne Airport Authority at the following address: Melbourne International Airport; One Air Terminal Parkway, Suite 220; Melbourne, Florida 32901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Melbourne Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Armando L. Rovira; Orlando Airports District Office; 5950 Hazelton National Drive; Suite 400; Orlando, Florida 32822, (407) 812-6331 x-31. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at

Melbourne International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 5, 2002, the FAA determined that the application to impose, use the revenue from, impose and use the revenue from PFC submitted by Melbourne Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 26, 2003.

The following is a brief overview of the application.

Proposed charge effective date:

October 1, 2003.

Proposed charge expiration date: June 1, 2018.

Level of the proposed PFC: \$3.00.

Total estimated PFC revenue: \$8,563,500.

Brief description of proposed project(s): Payment for Debt Service Incurred to Finance Terminal Development.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: ATCO (Air Taxi/Commercial Operators) which account for less than 1% of the total passenger enplanements at Melbourne International Airport.

Any person may inspect the application in person at the FAA office listed above under **ADDRESSES** and at the FAA regional Airports office located at: Southern Region Headquarters; 1701 Columbia Avenue; College Park, Georgia 30337.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Melbourne Airport Authority.

Issued in Orlando, Florida on November 5, 2002.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 02-28823 Filed 11-12-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In September 2002, there were six applications approved. This notice also includes information on one

application, approved in May 2002, inadvertently left off the May 2002 notice and three applications, approved in August 2002, inadvertently left off the August 2002 notice. Additionally, 10 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: City of Syracuse Department of Aviation, Syracuse, New York.

Application Number: 02-05-C-00-SYR.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$10,509,851.

Earliest Charge Effective Date: October 1, 2002.

Estimated Charge Expiration Date: May 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled/on demand air carriers filing FAA Form 1800-31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Syracuse-Hancock International Airport.

Brief Description of Project Approved for Use: Taxiway A rehabilitation.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate terminal apron.
Aircraft rescue and firefighting (ARFF) station.

Decision Date: May 5, 2002.

FOR FURTHER INFORMATION CONTACT: Philip Brito, New York Airports District Office, (516) 227-3800.

Public Agency: City of Redding, California.

Application Number: 02-02-C-00-RDD.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$1,251,567.

Earliest Charge Effective Date: November 1, 2002.

Estimated Charge Expiration Date: April 1, 2007.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Terminal chairs replacement.
Purchase used pavement sweeper.
Emergency generator—ARFF living quarters.

Crack and slurry seal—airport access road.

Crack and slurry seal—taxiways.

Security fencing.

Land acquisition.

Rescue and fire equipment.

Americans with Disabilities Act lift device.

Terminal building rehabilitation—phase II.

Land acquisition (8.0 acres)—approach protection.

Master plan update.

Taxiways C, D, and E rehabilitation and repair.

General aviation apron reconstruction.

Reconstruct runway 12/30.

Land acquisition—approach protection.

Construct high speed taxiway G.

Preliminary design—ARFF station.

Emergency communication system upgrade.

Runway 16/34 reconstruction—preliminary design and pavement maintenance program.

Runway 16/34 reconstruction—phase I.

Runway 16/34 reconstruction—phase II.

Runway 34 safety area culvert.

Decision Date: August 29, 2002.

FOR FURTHER INFORMATION CONTACT:

Marlys Vandervelde, San Francisco Airports District Office, (650) 876-2806.

Public Agency: Gainesville—Alachua County Regional Airport Authority, Gainesville, Florida.

Application Number: 02-02-C-00-GNV.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$4,637,954.

Earliest Charge Effective Date: January 1, 2003.

Estimated Charge Expiration Date: February 1, 2011.

Classes of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Runway and taxiway rehabilitation (phase II).

Land acquisition.

Rehabilitation/strengthening of aircraft aprons.

Perimeter fence.

Reconstruct medium intensity runway lights on runway 10/28, taxiways E and C lighting and visual guidance.

Planning studies.
Drainage improvements.
Terminal renovation.
PFC administration costs.

Decision Date: August 29, 2002.

FOR FURTHER INFORMATION CONTACT:

Richard Owen, Orlando Airports District Office, (407) 812-6331, extension 19.

Public Agency: County of San Luis Obispo, San Luis Obispo, California.

Application Number: 02-07-C-00-SBP.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$1,652,880.

Earliest Charge Effective Date: July 1, 2015.

Estimated Charge Expiration Date: July 1, 2019.

Classes of Air Carriers Not Required To Collect PFC's: Non-scheduled/on demand air carriers filing FAA Form 1800-31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at San Luis Obispo County Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Construction of hangar taxiways.
Construction of runway 11/29 blast pads.

Construction of airport service road.
Construction of northeast access road.
Construction of Environmental

Protection Agency/National Pollution Discharge Elimination System pollution control facility.

Runway 11/29 and taxiway A extension (phase I).

Runway 11/29 and taxiway A extension (phase II).

Safety area grading and drainage.

Construction of southwest apron.
Rehabilitation/reconstruction of taxiway A.

Construction of taxiway D.

Construction of taxiway H.

Construction of taxiway M.

Acquisition of runway sweeping equipment.

Airfield lighting improvements.

Update airport master plan.

Relocate threshold, runway 25.

Construction of ARFF facility.

Construction of taxiway L.

Construction of taxiway N.

Brief Description of Disapproved

Project: Install omnidirectional approach lighting system, runway 29.

Determination: Disapproved. This project is not Airport Improvement

Program (AIP) eligible in accordance with paragraph 550b of FAA Order 5100.38B, AIP Handbook (May 31, 2002). Therefore, this project does not meet the requirements of § 158.15(b).

Decision Date: August 30, 2002.

FOR FURTHER INFORMATION CONTACT:

Marlys Vandervelde, San Francisco Airports District Office, (650) 876-2806.

Public Agency: State of Connecticut Department of Transportation Bureau of Aviation and Ports, Windsor Locks, Connecticut.

Application Number: 10-14-C-00-BDL.

Application Type: Impose and use a PFC.

PFC Level: \$3.00.

Total PFC Revenue Approved in This Decision: \$1,102,000.

Earliest Charge Effective Date: March 1, 2015.

Estimated Charge Expiration Date: May 1, 2015.

Class of Air Carriers Not Required To Collect PFC's: On demand air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Bradley International Airport.

Brief Description of Project Approved for Collection and Use: Acquire 3,000-gallon ARFF truck with elevated waterway and driver enhanced vision system.

Decision Date: September 12, 2002.

FOR FURTHER INFORMATION CONTACT:

Priscilla Scott, New England Region Airports Division, (781) 238-7614.

Public Agency: State of Connecticut Department of Transportation Bureau of Aviation and Ports, Windsor Locks, Connecticut.

Application Number: 02-15-C-00-BDL.

Application Type: Impose and use a PFC.

PFC Level: \$3.00.

Total PFC Revenue Approved in This Decision: \$3,050,000.

Earliest Charge Effective Date: May 1, 2015.

Estimated Charge Expiration Date: September 1, 2015.

Class of Air Carriers Not Required To Collect PFC's: On demand air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Bradley International Airport.

Brief Description of Project Approved for Collection and Use: Security improvements and training system.

Decision Date: September 12, 2002.

FOR FURTHER INFORMATION CONTACT:

Priscilla Scott, New England Region Airports Division, (781) 238-7614.

Public Agency: Metropolitan Washington Airports Authority, Alexandria, Virginia.

Application Number: 02-04-C-00-IAD.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$88,526,169.

Earliest Charge Effective Date: May 1, 2005.

Estimated Charge Expiration Date: July 1, 2008.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled, on demand air carriers filing FAA Form 1800-31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Washington Dulles International Airport.

Brief Description of Projects Approved for Collection and Use at a \$4.50 PFC Level:

Concourse B expansion—phase I.

Wetland mitigation.

Brief Description of Projects Approved for Collection and Use at a \$3.00 PFC Level: Pedestrian connector to north flank garage.

Decision Date: September 16, 2002.

FOR FURTHER INFORMATION CONTACT:

Eleanor Schifflin, Eastern Region Airports Division, (718) 553-3354.

Public Agency: Maryland Aviation Administration, Baltimore, Maryland.

Application Number: 02-04-C-00-BWI.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$371,417,115.

Earliest Charge Effective Date: June 1, 2004.

Estimated Charge Expiration Date: June 1, 2011.

Classes of Air Carriers Not Required To Collect PFC's: Part 135 on-demand air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Baltimore Washington International Airport.

Brief Description of Projects Approved for Collection and Use at a \$4.50 PFC Level:

Terminal roadway expansion and improvement.
Terminal pedestrian access expansion and improvement.
15R parallel taxiway and airfield ramp construction.
Common use terminal equipment for International terminal fit out.
Surface movement guidance control system.

Decision Date: September 17, 2002.

FOR FURTHER INFORMATION CONTACT:

Eleanor Schifflin, Eastern Region Airports Division, (718) 553-3354.

Public Agency: County of Routt, Hayden, Colorado.

Application Number: 02-05-C-00-HDN.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$1,052,470.

Earliest Charge Effective Date:

December 1, 2002.

Estimated Charge Expiration Date:

August 1, 2005.

Classes of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Construction of taxiway B.
Runway 10/28 rehabilitation.
Americans with Disabilities Act improvements.

Security upgrades.

Land acquisition.

Snow removal equipment.

Decision Date: September 20, 2002.

FOR FURTHER INFORMATION CONTACT:

Christopher Schaffer, Denver Airports District Office, (303) 342-1258.

Public Agency: City of Pensacola, Florida.

Application Number: 02-05-C-00-PNS.

Application Type: Impose and use a PFC.

PFC Level: \$4.50.

Total PFC Revenue Approved in This Decision: \$350,000.

Earliest Charge Effective Date:

September 1, 2007.

Estimated Charge Expiration Date:

December 1, 2007.

Classes of Air Carriers Not Required To Collect PFC's: Part 135 air taxi/ commercial operators filing FAA Form 1800-31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Pensacola Regional Airport.

Brief Description of Projects Approved for Collection and Use: Heightened security costs.

Decision Date: September 25, 2002.

FOR FURTHER INFORMATION CONTACT: Bill Farris, Orlando Airports District Office, (407) 812-6331, extension 25.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
01-04-C-01-RNO, Reno, NV.	08/14/02	\$16,136,446	\$6,764,830	02/01/03	06/01/02
01-12-C-03-ORD, Chicago, IL.	08/16/02	1,315,327,790	1,340,327,790	10/01/16	12/01/16
00-02-C-01-GRI, Grand Island, NE.	08/23/02	578,060	545,219	04/01/08	11/01/13
98-02-C-03-FLL, Fort Lauderdale, FL.	09/24/02	183,627,920	181,471,378	01/01/07	09/01/05
01-03-C-01-FLL, Fort Lauderdale, FL.	09/24/02	27,841,586	26,202,553	05/01/08	08/01/06
01-04-C-01-FLL, Fort Lauderdale, FL.	09/24/02	30,702,199	44,333,391	08/01/09	03/01/08
00-03-C-01-MDT, Harrisburg, PA.	09/26/02	3,715,249	4,206,613	12/01/02	01/01/03
*98-04-C-03-SEA, Seattle, WA.	09/27/02	803,385,000	803,385,000	01/01/23	06/01/14
01-05-U-01-SEA, Seattle, WA.	09/27/02	NA	NA	01/01/23	06/01/14
01-06-U-01-SEA, Seattle, WA.	09/27/02	NA	NA	01/01/23	06/01/14

NOTE: The amendment denoted by an asterisk (*) include a change to the PFC level charged from \$3.00 per enplaned passenger to \$4.50 per enplaned passenger. For Seattle, WA, this change is effective on January 1, 2003.

Issued in Washington, DC on November 5, 2002.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 02-28825 Filed 11-12-02; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice

announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on August 9, 2002 [67 FR 51924-51925].

DATES: Comments must be submitted on or before December 13, 2002.

FOR FURTHER INFORMATION CONTACT: Mrs. Marcia Tabet at NHTSA, Evaluation Division (NPO-321) of the Office of Planning, Evaluation, and Budget, 202-366-2570, 400 Seventh Street, SW., Room 5208, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Heavy Vehicle Antilock Brake System (ABS) and Underride Guard Fleet Maintenance Study.

OMB Number: 2127-NEW.

Type of Request: New information collection.

Abstract: As required by the Government Performance and Results Act of 1993 and Executive Order 12866 (58 FR 51735), NHTSA reviews existing regulations to determine if they are achieving policy goals. Safety Standard 105 (49 CFR 571.105) requires Antilock Brake Systems (ABS) on hydraulic-braked vehicles with a Gross Vehicle Weight Rating (GVWR) greater than 10,000 pounds built on or after March 1, 1999. Safety Standard 121 (49 CFR 571.121) requires ABS on air-braked truck-tractors built on or after March 1, 1997 and on air-braked trailers and single-unit trucks manufactured on or after March 1, 1998. Safety Standard 223 (49 CFR 571.223) requires all trailers and semi-trailers built on or after January 24, 1998 with a Gross Vehicle Weight Rating of 10,000 pounds to have an underride guard. NHTSA's Office of

Evaluation and Regulatory Analysis is planning a data collection effort that will provide adequate information to perform an evaluation on the effect of ABS and underride guards on the maintenance of heavy vehicles in trucking fleets. This study will determine fleet maintenance policies and procedures related to ABS and underride guards, examine factors that motivate fleets to maintain antilock brakes and underride guards, and document fleet experience in maintaining ABS and underride guards since the implementation of the new safety standards.

Affected Public: Private trucking fleets nationwide.

Estimated Total Annual Burden: 420 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW., Washington, D.C. 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 11, 2002.

James F. Simons,

Acting Associate Administrator for Planning, Evaluation, and Budget.

[FR Doc. 02-28834 Filed 11-12-02; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2002-11846; Notice 2]

Decision That Nonconforming 2001-2002 Mercedes Benz SL (R230 Body) Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 2001-2002

Mercedes Benz SL (R230 Body) passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 2001-2002 Mercedes Benz SL (R230 Body) 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 have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

DATE: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202-366-5308).

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 ("FMVSS") 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 FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

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, LLC, of Baltimore, MD, ("J.K.") (Registered Importer 90-006) petitioned NHTSA to decide whether 2001-2002 Mercedes Benz SL (R230 Body) passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 1, 2002 (67 FR 21797), to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from U.S. Conformance of Jupiter, Florida, another registered importer (Registered Importer 00-214). This comment addressed issues that U.S. Conformance believed J.K. overlooked in describing alterations necessary to conform non-U.S. certified 2001-2002 Mercedes Benz SL (R230 Body) passenger cars to Federal Motor Vehicle Safety Standard Nos. 108 *Lamps, Reflective Devices, and Associated Equipment* and 301 *Fuel System Integrity*, and with the Federal Bumper Standard found in 49 CFR part 581. The agency accorded J.K. an opportunity to respond to the issues raised in this comment. The statements in the petition regarding these standards, U.S. Conformance's comments, and J.K.'s responses are set forth below.

Standard No. 108

The petition stated that the vehicles are capable of being readily altered to meet this standard by: (a) Installation of U.S.-model headlamps and front sidemarker lamps, and (b) installation of U.S.-model taillamp assemblies that incorporate rear sidemarker lamps.

U.S. Conformance stated that it determined, upon physical inspection of one of the vehicles in question, that the rear taillamp assemblies are capable of being modified to meet the standard. The comment noted that the required reflective materials for red side marker lamps are in all taillamp assemblies manufactured for these vehicles. The comment further noted that one additional light source can be added to the appropriate spot in each taillamp assembly to bring the assembly into compliance with the standard, eliminating the need for replacement of the assembly.

In its response, J.K. stood by the statement in its petition. J.K. stated that it had no idea whether the modifications proposed by U.S. Conformance would in fact conform the vehicles to the standard. J.K. noted, however, that those modifications would activate several warning systems if the wiring is not correct.

Standard No. 301

The petition stated that that non-U.S. certified 2001–2002 Mercedes Benz SL (Body 230) passenger cars are identical to their U.S. certified counterparts with respect to compliance with this standard.

U.S. Conformance expressed disagreement with this claim. The comment noted that after careful inspection, U.S. Conformance has determined that the fuel tank and related evaporative emission devices are not OBD2 compliant. The comment asserted that both systems must be able to trigger a “check engine” light in the event that a leak develops in either system, and do not have the capacity to do so. The comment expressed the belief that the fuel tank and evaporative emissions canister must be replaced with U.S.-model components.

J.K. responded that the modification identified by U.S. Conformance concern matters of E.P.A. compliance, but have no bearing on the conformity of the vehicles with applicable FMVSS.

Part 581 Bumper Standard

The petition stated that the vehicles, as originally manufactured, comply with the Bumper Standard.

U.S. Conformance stated that its physical inspection revealed that the front and rear bumper reinforcements do not extend to the corners of the chassis on either the driver's or the passenger's side. U.S. Conformance further stated that in its experience, some manner of reinforcement is required past the bumper corner and must continue longitudinally for a minimum of three inches. As a consequence, the comment asserted that without those reinforcements, the Mercedes Benz SL (R230 Body) is incapable of meeting the corner impact test requirements of the standard.

J.K. responded that the bumper systems of the European-model Mercedes Benz SL (R230 Body) are identical to those of the U.S.-certified model. J.K. submitted photographs of both components to verify this statement.

NHTSA believes that J.K. has adequately addressed each of the issues that U.S. Conformance has raised. The agency has been advised by representatives of DaimlerChrysler, the vehicle's manufacturer, that the Mercedes Benz SL (R230 Body) was first offered for sale in the United States in March 2002 as a model year 2003 vehicle. Since there were no substantially similar U.S.-certified versions of the vehicle in model years 2001 and 2002, J.K. should have

petitioned the agency to determine the vehicle's eligibility for importation pursuant to 49 U.S.C. 30141(a)(1)(B). As previously noted, that section permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test or such other evidence as NHTSA decides to be adequate. In this instance, the fact that there is a U.S.-certified counterpart for the 2003 model Mercedes Benz SL (R230 Body) has led the agency to conclude that non-U.S. certified models built in 2001 and 2002 have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS. In light of this circumstance, the agency has decided to grant the petition under 49 U.S.C. 30141(a)(1)(B).

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. VCP-19 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 2001–2002 Mercedes Benz SL (R230 Body) passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 7, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02-28822 Filed 11-12-02; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY**Fiscal Service****Surety Companies Acceptable on Federal Bonds: Liquidation—Delta Casualty Company**

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: Liquidation of an insurance company formerly certified by this Department as an acceptable surety/reinsurer on Federal bonds.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874-6850.

SUPPLEMENTARY INFORMATION: Delta Casualty Company, an Illinois company, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 60 FR 34440, June 30, 1995. The Company's authority was terminated by the Department of the Treasury effective April 8, 1996. Notice of the termination was published in the **Federal Register** of April 24, 1996, on page 18192.

On December 4, 2001, upon a petition by the Director of Insurance of the State of Illinois, the Circuit Court of Cook County, Illinois, issued an Order of Liquidation with respect to Delta Casualty Company. Nathaniel S. Shapo, Director of Insurance of the State of Illinois, and his successors in office, were appointed as the Liquidator. All persons having claims against Delta Casualty Company must file their claims by December 4, 2002, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. Federal Agencies should assert claim priority status under 31 U.S.C. 3713, and send a copy of their claim, in writing, to: Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, DC 20044-0875. Attn: Mr. Randy Harwell, Attorney.

The above office will consolidate and file any and all claims against Delta Casualty Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Mr. Harwell at (202) 307-0180.

The Circular may be viewed and downloaded through the Internet (<http://www.fms.treas.gov/c570>). A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, (202) 512-1800. When ordering the Circular from GPO, use the following stock number 769-004-04067-1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: November 4, 2002.

Wanda Rogers,

*Director, Financial Accounting and Services
Division, Financial Management Service.*

[FR Doc. 02-28821 Filed 11-12-02; 8:45 am]

BILLING CODE 4810-35-M

Corrections

Federal Register

Vol. 67, No. 219

Wednesday, November 13, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL 7398-4]

RIN 2040-AD81

Unregulated Contaminant Monitoring Regulation; Approval of Analytical Method for *Aeromonas*; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants

Correction

In rule document 02-27133 beginning on page 65888 in the issue of Tuesday,

October 29, 2002, make the following corrections:

§141.23 [Corrected]

1. On page 65897, in §141.23(a)(4)(i), in the table, under the heading “Methodology”, in the sixth entry “Distillation” was misspelled.

2. On page 65898, in the same section, preceding footnote 3 insert “* * * * *”.

[FR Doc. C2-27133 Filed 11-12-02; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Fiscal Service

Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System

Correction

In notice document 02-28117 beginning on page 67895 in the issue of Thursday, November 7, 2002, make the following corrections:

1. On page 67895, in the table, in the column titled “Off-line Surcharge”, in

the last entry, “25.05” should read, “25.00”.

2. On the same page, in the same table, in the column titled “Funds Movement Fee”, in the sixth entry, “.25” should read, “.05”.

3. On the same page, in the same table, in the same column, in the last entry, “25” should read, “.05”.

[FR Doc. C2-28117 Filed 11-12-02; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

Wednesday,
November 13, 2002

Part II

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

**48 CFR Parts 6, 8, and 52
Federal Acquisition Regulation;
Procurement of Printing and Duplicating
Through the Government Printing Office;
Proposed Rule**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 6, 8, and 52**

[FAR Case 2002-011]

RIN 9000-AJ51

**Federal Acquisition Regulation;
Procurement of Printing and
Duplicating Through the Government
Printing Office**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The FAR Council is proposing amendments to the Federal Acquisition Regulation (FAR) to implement the policy set forth in Office of Management and Budget (OMB) Memorandum No. M-02-07, Procurement of Printing and Duplicating Through the Government Printing Office (GPO) (May 3, 2002). In order to induce competition, save taxpayer money and promote small business opportunities, the memorandum eliminates restrictions that mandated use of GPO as the single source and frees agencies to select printing from a wide array of sources that can demonstrate their ability to meet the Government's needs most effectively. Moreover, specific new actions are proposed to improve dramatically the depository library system by ensuring that all Government publications are in fact made available to the nation's depository libraries.

DATES: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before December 13, 2002.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farcase.2002-011@gsa.gov. Please submit comments only and cite FAR case 2002-011 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mrs. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAR Case 2002-011. Contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501-4755 for information pertaining to status or

publication schedules. The TTY Federal Relay Number for further information is 1-800-877-8973.

SUPPLEMENTARY INFORMATION:**A. Background***1. Overview*

In order to induce competition, save taxpayer money and promote small business opportunities, this proposed rule implements OMB Memorandum No. M-02-07, Procurement of Printing and Duplicating Through the Government Printing Office (GPO). The proposed rule amends the FAR by—

- Removing restrictions in FAR 8.8 that mandated exclusive use of GPO for printing and related supplies;
- Providing agencies express authorization to address printing needs by either contracting with a private source or by using the GPO when GPO offers the best value;
- Substantially limiting the circumstances where agencies may rely on in-house or other Executive Branch printing operations;
- Requiring agencies that acquire printing services in excess of \$2,500 directly from private sector sources to use competitive practices that facilitate broad marketplace participation, including a much broader range of opportunities for small businesses;
- Ensuring that agencies can and will purchase printing services that are the "best value" for their specific needs; and
- Improving the depository library system by taking concrete steps to ensure that all Government publications are in fact provided to the GPO's Superintendent of Documents for distribution to the Federal Depository Library Program (FDLP).

*2. Procurement of Printing and Related Supplies***a. Freedom To Choose Among Different Printing Sources**

The GPO is a legislative branch agency that was created by Congress and is controlled by the Joint Committee on Printing. While GPO was originally created to fulfill the printing needs of Congress, Congress has since expanded the role of GPO by purporting to require that essentially all Executive Branch printing be done by or through GPO.

In 1996, the Department of Justice's Office of Legal Counsel issued an opinion concluding that the statutes compelling the Executive Branch to utilize GPO constitute are unconstitutional and therefore inoperative. See Memorandum from Walter Dellinger, Assistant Attorney General, to Emily C. Hewitt, General

Counsel, General Services Administration, May 31, 1996 at 1, 8. The Justice Department's opinion stated explicitly that the Executive Branch was not bound to follow those statutes. See *id.* at 8. The Justice Department recently reaffirmed its 1996 opinion. See Memorandum for Adam F. Greenstone, General Counsel, Office of Administration, Executive Office of the President, October 22, 2002. Nonetheless, FAR Subpart 8.8 has perpetuated the use of GPO as a mandatory source. Accordingly, absent the FAR change proposed herein, agencies subject to the FAR currently must issue a FAR deviation pursuant to Subpart 1.4 of the FAR in order to contract with a private printer rather than GPO.

The type of pro-competition reforms to public printing identified herein have a long and broad history of bipartisan support:

- In 1994 President Clinton stated that comprehensive reform of Federal printing could "improve the efficiency and cost-effectiveness of Government printing by maximizing the use of private sector printing capability through open competitive procedures and by limiting Government-owned printing resources to only those necessary to maintain a minimum core capacity." Statement on Signing the Legislative Branch Appropriations Act of 1995, 30 Weekly Comp. Pres. Doc. 1541 (July 22, 1994).
- Alice Rivlin, while serving as Deputy Director of OMB, explained in 1994 that "significant efficiencies, much improved service, and cost savings will be realized by injecting more competition and direct accountability into the area of printing procurement." See Statement of Alice Rivlin, Deputy Director, Office of Management and Budget, Committee on Rules and Administration, United States Senate (February 3, 1994).

• David M. Walker, Comptroller General of the United States, testified that "GPO's monopoly-like role in providing printing services perpetuates inefficiency because it permits GPO to be insulated from market forces and does not provide incentives to improve operations that will ensure quality services at competitive prices. Federal agencies could be given the authority to make their own printing policies, requiring GPO to compete with private sector printing service providers." Statement of David M. Walker, U.S. Senate Committee on the Budget, February 1, 2000 at 6-7

- Congressman Tom Davis, Chairman of the Subcommittee on Technology and Procurement Policy of the House

Committee on Government Reform wrote, on March 12, 2002, that “a permanent Government-wide solution to the GPO monopoly can be achieved by OMB, under its own authority, taking immediate steps to give agencies the greater “flexibility” that Deputy O’Keefe called for in his testimony. This authority is evident under a May 31, 1996 Legal Opinion of the Department of Justice Office of Legal Counsel. . . .”

On May 3, 2002, the Director of OMB issued a policy memorandum (No. M-02-07) governing Executive Branch use of GPO for departmental and agency printing needs. The memorandum points out that while the GPO relied on contractors to handle 84 percent of the printing work it performed in fiscal year 2001, it charged the Executive Branch premiums (above and beyond the private contractors’ bids) of between 7 percent and 14 percent, plus various processing fees.

OMB’s memorandum concludes that “[t]he time has come for the Executive Branch to liberate its agencies from a monopoly that unfairly penalizes both taxpayers and efficient would-be competitors.” It directs agencies to take full advantage of the marketplace, recognizing that “[t]axpayers tend to benefit most from open competition, rather than government monopolies.” Rather than having the GPO interact exclusively with private contractors and make decisions for agencies, OMB’s new policy gives agencies the freedom to conduct their own competitions and work with private contractors to produce the best possible printed product. In particular, the OMB memorandum allows Executive Branch agencies to choose between GPO and the private sector based upon the “best quality, cost, and time of delivery,” *i.e.*, by using “best value” cost-technical tradeoff procurements where appropriate. This freedom will enable agencies to control the cost and quality of the printing services for which they are accountable. Of course, where GPO provides the best value, it should continue to receive Government orders.

Many commercial printers have expressed their support to OMB for the opportunities its new policy will provide by allowing them to contract directly with Executive Branch agencies. One company in particular wrote to OMB to welcome the passing of an era marked by the use of outdated specifications, the failure to take advantage of cost saving technology, and reliance on costly distribution channels. It is looking forward to a new day of cost-effective quality contracting for printing.

Agencies are also anticipating the benefits of an open environment. During a July 10, 2002 hearing before the Joint Committee on Printing, the Director of OMB offered a few examples of agency frustrations that bear out the inefficiencies perpetuated by forced reliance on a single provider. These inefficiencies include insufficient consideration of quality, inadequate attention to customer satisfaction, and misunderstandings about agency needs that have arisen over the years because GPO’s policies generally prevent agencies from communicating directly with its contractors. OMB’s new policy is designed to help agencies overcome these shortcomings by giving them the power of choice—*i.e.*, the ultimate tool to drive printers, including the GPO, to offer their best products and services and make customer satisfaction job one.

Nonetheless, a handful of legislators who oversee GPO continue to oppose pro-competition reform. For example, Section 4 of the Continuing Resolution for FY 2003, Public Law 107-240 (H.J. Res. 122), included a provision essentially requiring that funds be used in accordance with section 501 of title 44. In an October 22, 2002 opinion, however, the Department of Justice concluded that this language, like other statutory provisions compelling the Executive Branch to use the GPO, is an unconstitutional infringement upon Executive Branch powers and therefore is not binding. *See* Memorandum for Adam F. Greenstone, General Counsel, Office of Administration, Executive Office of the President, October 22, 2002.

In order to implement the pro-competition reforms that have long received broad, bipartisan support, this rule removes restrictions in FAR 8.8 that have mandated exclusive use of GPO for printing. In its place, the rule provides agencies express authorization to address printing needs by contracting with a private source, using the GPO, or, in very limited circumstances, relying on in-house or other Executive Branch printing operations.

b. Limited Use of In-House or Other Executive Branch Printing Operations

OMB’s memorandum recognizes the need to narrow use of often inefficient in-house printing operations. It allows agencies to consider use of in-house or other Executive Branch printing operations only under limited circumstances when in-house printing is the only reasonably available option. The memorandum makes clear that agencies must make decisions based upon a “full account of all costs” and must provide a “full accounting of all

costs” in regular reports to OMB. In short, OMB will not permit agencies to use this new policy to make or continue costly investments in printing equipment when more cost-effective solutions are available.

The rule reflects this limitation. It permits an agency to rely on in-house or other Executive Branch printing operations only where such Executive Branch operations demonstrate, based upon a full account of all costs and through public-private competition (unless an exception to competition applies), that they offer the best combination of quality, cost, and delivery or, alternatively, the lowest overall cost in a competition based on cost or price and cost or price related factors.

c. Use of Competition To Open Opportunities

When GPO decides to pass some of its work to the private sector for printing services on behalf of Executive Branch agencies, GPO’s rules call for it to notify private printers of proposed contract actions through the Internet. With respect to contracts entered into under the FAR, FAR 5.101(a)(1) requires Executive Branch agencies to disseminate proposed contract actions above \$25,000 through the Government-wide point of entry, <http://www.fedbizopps.gov>. (FedBizOpps). Now, to ensure maximum opportunities, especially for small businesses, FedBizOpps will serve as a one-stop Internet gateway to Executive Branch procurement opportunities for every printing contract in excess of \$2,500. This gateway will make the Federal Government more efficient, accessible, and citizen-centric.

Hence, the proposed rule extends the synopsis requirements and response times currently applicable to acquisitions between \$25,000 and the simplified acquisition threshold to acquisitions for printing over \$2,500. As a result, all responsible sources will have an opportunity to submit offers for open market actions over \$2,500. To ensure necessary flexibility, agencies would continue to be able to exercise exceptions to competition as may be necessary, such as for unusual and compelling urgency.

GSA is thinking about creating a multiple award schedule (MAS) to help facilitate the acquisition of printing. This new schedule for printing would be designed to maximize participation by all types of printers, including small businesses. The proposed rule would impose certain special procedures for the use of this schedule. Specifically, it would require that all MAS printing

contractors be given an opportunity to compete to fill agency orders in excess of \$2,500. Ordering offices would be required to use the electronic "e-Buy" system (*www.gsaAdvantage.gov*) to announce agency printing needs. A copy of all e-Buy notices for printing would be duplicated in FedBizOpps for informational purposes.

To increase further contracting opportunities for the printing community, the rule limits the length of indefinite quantity contracts for printing to one year. Indefinite quantity contracts allow work to be placed through the issuance of orders under the contract. Because consideration for work under an indefinite quantity contract is limited to contract holders for the duration of the contract, non-contract holders must wait for contract renewal before they can compete. Hence, limiting the duration of the underlying contract should enable increased marketplace participation. For similar reasons, the proposed rule would require that blanket purchase agreements (BPAs) for printing that have been established under the MAS also be limited to not more than one year in length. BPAs are used for carrying out repetitive MAS purchases with one or a small number of MAS contractors.

Finally, the proposed rule allows a short transition period during which agencies may opt to use the services of GPO without requiring competition to select GPO. This period is intended to give agencies and printing contractors an opportunity to adjust to the new environment created by OMB's memorandum, where acquisitions will be made both by GPO (which, as noted above, contracts out a significant amount of work required by agencies) and directly by agencies.

d. New Opportunities for Small Businesses

On March 19, 2002, the President announced his Small Business Agenda, a plan to help create an environment where small businesses can flourish. A critical component of this plan involves efforts to improve access to government contracting opportunities for small businesses, including by limiting the current practice of indefinite-quantity contracts. This proposed rule will help further this important Presidential objective.

Information on contracting opportunities will be provided on what is arguably the most robust one-stop gateway of its kind in the world—enabling vendors to easily acclimate themselves to the activities of departments and agencies across the Executive Branch.

- FedBizOpps, which serves as the single point of entry on the Internet for business opportunities, hosts a wide variety of business documents, including notices, solicitations, and other related acquisition information.

- When sellers "click" to a notice, they are also immediately obtaining direct access to all solicitation and related information electronically available at that time on the acquisition.

- E-mail notifications allow interested vendors to automatically receive information about contracting opportunities—both notices and solicitation information initially available and all subsequent information relating to that procurement. This feature eliminates the need for repeated searches to gain access to up-to-date information.

As noted above, the functionality of FedBizOpps, which is typically focused on actions over \$25,000, will be expanded for printing acquisitions to also cover actions over \$2,500. In addition, the length of indefinite-quantity contracts, which are often used to conduct competitions restricted to pre-qualified contractors, will be limited to give marketplace participants more opportunities to compete. In all, the ability to work directly with agencies on printing jobs of all types and sizes will give small business printers many new opportunities to demonstrate their abilities for future work.

3. Information Distribution

Effective dissemination of Government information is a cornerstone of citizen-centric Government. For this reason, OMB's memorandum recognizes the need to improve distribution to the Federal Depository Library Program (FDLP). The 1,300 depository libraries operating throughout the country that make up the FDLP help to ensure that the public has equal, efficient, permanent, and ready access to government publications. Unfortunately, many Government publications (as many as 50 percent by some estimates) become so-called "fugitives," never making their way to the Superintendent of Documents, who is responsible for indexing, cataloging and distributing documents to the public through the FDLP. Searching for a publication that cannot be easily located (*e.g.*, because it has not been indexed and catalogued) is a time-consuming, if not fruitless, exercise. Until sufficient attention is given to this issue, the public's access to government publications will be unnecessarily impaired. The proposed rule is designed to improve this unacceptable record.

The proposed rule addresses the "fugitive documents" problem by specifying mandatory steps for meeting the requirement that Executive Branch agencies provide publications to the Superintendent of Documents for distribution to the depository libraries. Each publication would be transmitted using electronic means unless such means are unavailable. Agencies' obligation to provide Government publications to the Superintendent applies regardless of the source that prints the publications.

The FAR Council is considering whether the FAR should include a clause that contracting officers would be required to insert in contracts for the printing of Government publications where a contractor will assist the Government in ensuring the Superintendent receives a copy of the publication. A clause might read as follows:

Information Distribution (Date)

To assist the Government in ensuring effective distribution of Government publications printed under this contract, the contractor shall submit one copy of each Government publication, as identified by the Government in the contract, to the Superintendent of Documents from the Government Printing Office. Transmission shall be made using electronic means unless such means are unavailable.

The public is invited to comment on the need for an information distribution clause.

The proposed rule also recognizes that when agencies contract directly with private sector printers, the GPO may wish to purchase copies of Government publications from such printers for depository libraries or for the public sales program or, if economical, may wish to print additional copies in house at GPO. Accordingly, the rule provides that, whenever feasible, agencies should consult with the GPO before issuing a solicitation to determine the number of copies the GPO may wish to obtain. When GPO elects to order from an agency's selected contractor, a proposed FAR clause will require that the contractor submit invoices directly to the GPO for payment.

In addition to the new FAR coverage, OMB will take steps to address the fugitive document problem. Among other things, agencies will be required, as part of their reporting on printing, to report to OMB on compliance with their obligation to make information available to the public, including through the FDLP. This requirement will be set forth in OMB guidance. OMB, in consultation with interested stakeholders, will also

determine whether current policies or practices related to the publication of Government information need to be changed to ensure maximum possible reliance on distribution in cost-effective electronic formats.

4. Executive Order 12866.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Council does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Today, private sector printers, including small businesses, who wish to perform printing for the Federal Government must contract with the GPO. This proposed change to the FAR should create new opportunities for private printers of all sizes by giving them the opportunity to contract directly with Executive Branch agencies.

With respect to purchases handled directly by the Executive Branch pursuant to the FAR, agencies would be required to provide notice using FedBizOpps for purchases over \$2,500. In addition, the FAR imposes a mandatory set-aside for small businesses for actions between \$2,500 and \$100,000 (reflecting statutory requirements in the Small Business Act).

The rule would only authorize agencies to use in-house or other Executive Branch printing operations in lieu of either a small or large private sector printer in limited circumstances. OMB has made clear that its policy is not to be used to shift work to in-house performance. OMB will require agencies to provide a full accounting of all costs appropriately attributed to work performed in house, to be compared with the costs of work contracted directly to the private sector or performed at GPO.

The Council recognizes that agencies may seek to acquire printing services through the use of indefinite quantity contracts, including through GSA's MAS, where opportunities to receive agency orders for work are limited to pre-qualified contract holders (as opposed to the printing marketplace at large). To increase opportunities for marketplace participation (including by small businesses), the rule would limit the length of indefinite quantity contracts for printing to one year. This

limitation would not apply to MAS contracts, which already permit new participants through continuous open seasons. However, the FAR would require that all MAS printing contractors be given an opportunity to compete to fill agency orders over \$2,500. In addition, blanket purchase agreements (used for repetitive MAS purchases) would be limited to not more than one year in length.

An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments on the impact of the proposed FAR revision on small entities. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 2002-011) in correspondence. In addition, the Council will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) does not apply because the proposed rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 6, 8, and 52

Government procurement.

Dated: November 5, 2002.

David A. Drabkin,

Deputy Associate Administrator for Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 6, 8, and 52 as set forth below:

1. The authority citation for 48 CFR parts 6, 8, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 6—COMPETITION REQUIREMENTS

6.302-5 [Amended]

2. Amend section 6.302-5 by removing paragraph (b)(3) and redesignating paragraphs (b)(4), (b)(5), and (b)(6) as paragraphs (b)(3), (b)(4), and (b)(5), respectively.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.003 [Amended]

3. Amend section 8.003 by removing paragraph (b) and redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively.

4. Revise subpart 8.8 to read as follows:

Subpart 8.8—Acquisition of Printing and Related Supplies

8.800 Scope of subpart.

This subpart provides policy for the acquisition of Government printing and related supplies.

8.801 Policy.

(a) Agencies are not required to satisfy requirements for Government printing and related supplies from or through an exclusive source. Agencies may address needs for Government printing and related supplies by—

(1) Contracting with a private source;

(2) Using the Government Printing Office (GPO), in accordance with the requirements of paragraph (c) of this section; or

(3) Relying on in-house or other executive branch printing operations, but only where such executive branch operations demonstrate, based upon a full account of all costs and through public-private competition (unless an exception to competition applies), that they offer the best combination of quality, cost, and delivery or, alternatively, the lowest overall cost in a competition based on cost or price and cost or price related factors.

(b)(1) Except as provided in paragraph (b)(2) of this section, agencies shall make awards for Government printing in accordance with applicable parts of the FAR, including Parts 5, 6, 10, 12, 13, 14, 15, 17 and 19 and Subpart 8.4.

(2)(i) *Synopsis and response time.* Synopsizing requirements and response times currently applicable to acquisitions over \$25,000 but less than the simplified acquisition threshold (see 5.101(a)(1) and subpart 5.2) shall also apply to acquisitions for printing over \$2,500.

(ii) *Use of Federal Supply Schedules.* (A) Notwithstanding 8.404(b)(2) and (3), all schedule contractors participating on the schedule for printing shall be given notice using the General Services Administration's electronic quote system, "e-Buy"

(www.gsaAdvantage.gov) and an opportunity to compete for any order over \$2,500. Ordering offices shall ensure that—

(1) e-Buy notices are forwarded to the GPE for publication; and

(2) The forwarded notice is identified on the GPE as being provided for informational purposes only.

(B) Any blanket purchase agreement entered into pursuant to FAR 8.404(b)(4) shall not exceed one year in length.

(iii) *Use of indefinite-quantity contracts (other than the Federal Supply Schedules) and requirements contracts.*

(A) Contracting officers shall ensure that—

(1) A notice is forwarded to the GPE for publication before an order for printing is placed under either an indefinite-quantity contract or a requirements contract; and

(2) The forwarded notice is identified on the GPE as being provided for informational purposes only.

(B) Notwithstanding any other FAR provision, indefinite-quantity and requirements contracts (*see* 16.5) for printing shall not exceed 1 year in length.

(c) Until January 1, 2004, agencies may use the services of the GPO without conducting a competition. However, agencies shall not obtain printing services from GPO after January 1, 2004 unless GPO demonstrates through public-private competition (unless an exception to competition applies) that it offers the best combination of quality, cost, and delivery or, alternatively, the lowest overall cost in a competition based on cost or price and cost or price related factors.

(d) For each Government publication to be printed, the agency shall ensure a copy of the publication is provided to the GPO's Superintendent of Documents

for distribution to the Federal Depository Libraries and any other official use as may be necessary for the GPO to carry out its responsibilities. When transmitting the publication, the agency shall state that the copy is being provided so that GPO may produce however many copies the Superintendent of Documents has determined are necessary for distribution to the Federal Depository Libraries. Transmission to the Superintendent shall be made using electronic means unless such means are unavailable.

(e) Whenever feasible, the agency should consult with the GPO's Public Printer before issuing a solicitation for a printing acquisition to determine the number of copies of a Government publication the GPO may wish to obtain and the agency shall take reasonable and appropriate steps to assist GPO if GPO wishes to purchase copies from a private contractor employed by the agency.

8.802 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 52.208-XX, Purchases by GPO,

in all solicitations and contracts for Government printing of a Government publication where the GPO timely advises the agency before issuance of the solicitation that it will seek to make purchases under the contract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Add section 52.208-XX to read as follows:

52.208-XX Purchases by GPO.

As prescribed in 8.802, insert the following clause:

Purchases by GPO (Date)

As specified in the contract, the contractor, on written request from the Public Printer of the Government Printing Office (GPO), shall furnish up to [INSERT number] of the following publications [INSERT DESCRIPTION] to the GPO. Invoices for such purchases shall be submitted to the GPO's Public Printer. Payment will be made directly by the Public Printer.

(End of clause)

[FR Doc. 02-28668 Filed 11-12-02; 8:45 am]

BILLING CODE 6820-EP-P



Federal Register

**Wednesday,
November 13, 2002**

Part III

The President

**Proclamation 7624—National Employer
Support of the Guard and Reserve Week,
2002**

Presidential Documents

Title 3—**Proclamation 7624 of November 8, 2002****The President****National Employer Support of the Guard and Reserve Week, 2002****By the President of the United States of America****A Proclamation**

Our National Guard and Reserve units comprise 38 percent of America's military forces, and we are grateful for the commitment of these brave men and women. During National Employer Support of the Guard and Reserve Week, we pay tribute to those serving our Nation in the National Guard and Reserve, and to the civilian employers whose continued support enables our Reserve component soldiers, sailors, airmen, marines, and coast guardsmen to defend our country with honor and distinction.

Through their service, National Guard and Reserve personnel play an important role in our efforts to advance democracy, peace, and freedom across our Nation and around the world. These dedicated men and women train vigorously and work closely with our active-duty forces, serving as equal partners in our integrated Armed Forces. As our need for their efforts expands, these citizen-soldiers will spend more time away from their families, homes, and workplaces protecting our Nation and the ideals that make us strong.

As we face new challenges and welcome new opportunities, the continued support of patriotic employers remains vital to the success of our National Guard and Reserve. Our volunteer National Guardsmen and Reservists rely on their employers for essential support and encouragement that often come at the employer's expense. These employers reflect the spirit of our Nation, and during this week I join with members of our Armed Forces and all our citizens in recognizing those who serve in our National Guard and Reserve and all who support them, and all Americans whose contributions and sacrifices help our military remain the finest fighting force in the world.

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 November 10 through November 16, 2002, as National Employer Support of the Guard and Reserve Week. I encourage all Americans to join me in expressing our heartfelt thanks to the civilian employers of the members of our National Guard and Reserve for their extraordinary sacrifices on behalf of our Nation. I also call upon State and local officials, private organizations, businesses, and all military commanders to observe this week with appropriate ceremonies and activities.

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

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is written in a cursive style with a large, sweeping initial "G" and a distinct "W" and "B".

[FR Doc. 02-28995
Filed 11-12-02; 8:49 am]
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Federal Register

**Wednesday,
November 13, 2002**

Part IV

Department of Justice

Immigration and Naturalization Service

**Notice Designating Aliens Subject to
Expedited Removal Under Section
235(b)(1)(A)(iii) of the Immigration and
Nationality Act; Notice**

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS Order No. 2243-02]

Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act**AGENCY:** Immigration and Naturalization Service, Justice.**ACTION:** Notice.

SUMMARY: This Notice authorizes the Immigration and Naturalization Service ("the Service") to place in expedited removal proceedings certain aliens who arrive in the United States by sea, either by boat or other means, who are not admitted or paroled, and who have not been physically present in the United States continuously for the two-year period prior to the determination of inadmissibility under this Notice. Aliens falling within this newly designated class who are placed in expedited removal proceedings will be detained, subject to humanitarian parole exceptions, during the course of immigration proceedings, including, but not limited to, any hearings before an immigration judge. The Service believes that implementing the expedited removal provisions, and exercising its authority to detain this class of aliens under 8 CFR part 235, will assist in deterring surges in illegal migration by sea, including potential mass migration, and preventing loss of life. A surge in illegal migration by sea threatens national security by diverting valuable United States Coast Guard and other resources from counter-terrorism and homeland security responsibilities. Placing these individuals in expedited removal proceedings and maintaining detention for the duration of all immigration proceedings, with limited exceptions, will ensure prompt immigration determinations and ensure removal from the country of those not granted relief in those cases, while at the same time protecting the rights of the individuals affected.

EFFECTIVE DATES: This Notice is effective on November 13, 2002.

Written comments must be submitted on or before December 13, 2002.

ADDRESSES: Written comments must be submitted to the Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2243-02 on your correspondence. You may also submit comments electronically to the Service

at insregs@usdoj.gov when submitting comments electronically you must include INS 2243-02 in the subject box. Comments are available for public inspection at the above address by calling (202) 514-3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT:

Linda M. Loveless, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, telephone (202) 616-7489.

SUPPLEMENTARY INFORMATION: Section 302 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, Div. C, 110 Stat. 3009-546 (IIRIRA), amended section 235(b) of the Immigration and Nationality Act ("Act"), 8 U.S.C. 1225(b), to authorize the Attorney General to remove without a hearing before an immigration judge aliens arriving in the United States who are inadmissible under sections 212(a)(6)(C) or 212(a)(7) of the Act, 8 U.S.C. 1182(a)(6)(C) and 1182(a)(7). Under these "expedited removal" proceedings, an alien who indicates an intention to apply for asylum or who asserts a fear of persecution or torture is referred to an asylum officer to conduct an interview as to whether such alien has a "credible fear." Sections 235(b)(1)(A)(ii) and (B) of the Act, 8 U.S.C. 1225(b)(1)(A)(ii) and (B); 8 CFR 235.3(b)(4). Those who meet that standard are referred to an immigration judge for a hearing on the merits of their claim or claims. 8 CFR 208.30(f).

The Service previously published a proposed rule and two interim rules to implement this expedited removal authority. 63 FR 19302-01 (April 20, 1998); 62 FR 10330 (March 6, 1997); and 62 FR 444-01 (Jan. 3, 1997). These rules established the current expedited removal. 8 CFR 235.3(b).

Under section 235(b)(1) of the Act, 8 U.S.C. 1225(b)(1), expedited removal proceedings may be applied to two categories of aliens. First, section 235(b)(1)(A)(i) of the Act, 8 U.S.C. 1225(b)(1)(A)(i), permits expedited removal proceedings for aliens who are "arriving in the United States," except for Cuban citizens who arrive at United States ports-of-entry by aircraft, who are exempted from expedited removal under section 235(b)(1)(F) of the Act, 8 U.S.C. 1225(b)(1)(F). Federal regulations define an "arriving alien." 8 CFR 1.1(q). Second, section 235(b)(1)(A)(iii) of the Act, 8 U.S.C. 1225(b)(1)(A)(iii), permits the Attorney General, in his sole and unreviewable discretion, to designate certain other aliens to whom the

expedited removal provisions may be applied, even though they are not arriving in the United States. Specifically, the Attorney General may apply the expedited removal provisions to any or all aliens who have not been admitted or paroled into the United States and who have not been physically present in the United States continuously for the two-year period prior to a determination of inadmissibility by an immigration officer. The Attorney General delegated his authority to designate classes of aliens to the Commissioner of the Service:

As specifically designated by the Commissioner, aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled following inspection by an immigration officer at a designated port-of-entry, and who have not established to the satisfaction of the immigration officer that they have been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility * * *. When these provisions are in effect for aliens who enter without inspection, the burden of proof rests with the alien to affirmatively show that he or she has the required continuous physical presence in the United States. Any absence from the United States shall serve to break the period of continuous physical presence.

8 CFR 235.3(b)(1)(ii).

The designation may become effective upon publication in the **Federal Register**, or, if the "delay caused by the publication would adversely affect the interests of the United States or the effective enforcement of the immigration laws," the designation may become effective upon issuance and be published as soon as practicable. 8 CFR 235.3(b)(1)(ii). Since the expedited removal authority was added to the Act in 1996, neither the Attorney General nor the Commissioner of the Service has not utilized this "specific designation" authority.

This Notice constitutes the first designation of an additional class of aliens who may be placed in expedited removal proceedings: aliens who arrive in the United States by sea, either by boat or other means, who are not admitted or paroled, and who have not been physically present in the United States continuously for the two-year period prior to a determination of inadmissibility by a Service officer. The alien has the burden affirmatively to show to the satisfaction of an immigration officer that the alien has not been present in the United States continuously for the relevant two-year period. Section 235(b)(1)(A)(iii)(II) of the Act, 8 U.S.C. 1225(b)(1)(A)(iii)(II); 8

CFR 235.3(b)(1)(ii). This Notice does not apply to aliens who arrive at United States ports-of-entry.

It is important to note that certain aliens who arrive in the United States by sea are already subject to expedited removal if they fall within the definition of "arriving alien" in 8 CFR 1.1(q): "an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport." This Notice will ensure that all aliens, with one exception noted below, who arrive illegally by sea, whether interdicted or not, will be subject to expedited removal.

This designation is necessary to remove quickly from the United States aliens who arrive illegally by sea and who do not establish a credible fear. The ability to detain aliens while admissibility is determined and protection claims are adjudicated, as well as to remove quickly aliens without protection claims, will deter additional aliens from taking to the sea and traveling illegally to the United States. Illegal migration by sea is perilous and the Department of Justice has repeatedly cautioned aliens considering similar attempts to reject such a hazardous voyage.

Any alien who falls within this designation, who is placed in expedited removal proceedings, and who indicates an intention to apply for asylum or who asserts a fear of persecution or torture will be interviewed by an asylum officer who will determine whether the alien has a credible fear. If that standard is met, the alien will be referred to an immigration judge for a hearing on the merits of the protection claim or claims. Sections 235(b)(1)(A)(ii) and (B) of the Act, 8 U.S.C. 1225(b)(1)(A)(ii) and (B); 8 CFR 235.3(b)(4). The Forms I-867A and I-867B currently used by the officers who process aliens under the expedited removal program, in accordance with the statutory requirement at section 235(b)(1)(B)(iv) of the Act, 8 U.S.C. 1225(b)(1)(B)(iv), carefully explains to all aliens in expedited removal proceedings an alien's right to a "credible fear" interview. The forms also require that the officer determine whether the alien has any reason to fear harm if returned to his or her country. These forms will also be used for aliens placed in expedited removal under this designation. Officers who administer the program are trained to be alert for any verbal or non-verbal indications that the alien may be afraid to return to his or her homeland.

The Service, with limited exceptions, plans to detain aliens designated by this

Notice. Section 235(b)(1)(B)(iii)(IV) of the Act, 8 U.S.C. 1225(b)(1)(B)(iii)(IV) and 8 CFR 235.3(b)(iii) directs that any alien who is placed in expedited removal proceedings shall be detained pending a final determination of credible fear and if found not to have such a fear, such alien shall be detained until removed. Parole of such alien may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective.

Section 235(b)(1)(B)(ii) of the Act, 8 U.S.C. 1225(b)(1)(B)(ii), directs that if a credible fear has been established, the alien shall be detained for further consideration of the protection claim or claims. Immigration judge review of custody determinations under 8 CFR 3.19(a) are permitted only for bond and custody determinations pursuant to section 236 of the Act, 8 U.S.C. 1226, and 8 CFR part 236. Aliens designated under this notice would not be detained under section 236 of the Act, but rather under section 235. Aliens subject to expedited removal procedures under section 235 of the Act are not eligible for bond, and therefore may not seek a bond redetermination before an immigration judge. Parole of such aliens based on humanitarian concerns may be considered in accordance with section 212(d)(5) of the Act, 8 U.S.C. 1182(d)(5) and 8 CFR 212.5.

This Notice applies to certain aliens who arrive in the U.S. by sea on or after November 13, 2002. Furthermore, expedited removal proceedings, however, will not be initiated against Cuban citizens who arrive by sea because it is longstanding U.S. policy to treat Cubans differently from other aliens. *See, e.g.,* Cuban Adjustment Act, Pub. L. 89-732 (1966) (allowing any native or citizen of Cuba who is inspected and admitted or paroled into the United States to apply for lawful permanent resident status after one year). Finally, crewmen and stowaways will not be subject to this Notice because the Act already mandates specific removal proceedings for such aliens.

This Notice does not require "notice and comment" under the Administrative Procedures Act because Congress explicitly authorized the Attorney General to designate categories of aliens to whom expedited removal proceedings may be applied, and that "[s]uch designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time (emphasis added)." Section 235(b)(1)(A)(iii)(I), 8 U.S.C.

1225(b)(1)(A)(iii)(I). Current regulations of the Service provide public notice that the designation of new categories of aliens to be subjected to expedited removal will be made via publication of a Notice in the **Federal Register**:

The Commissioner shall have the sole discretion to apply the provisions of section 235(b)(1) of the Act, at any time, to any class of aliens described in this section. The Commissioner's designation shall become effective upon publication of a notice in the **Federal Register**. However, if the Commissioner determines, in the exercise of discretion, that the delay caused by publication would adversely affect the interests of the United States or the effective enforcement of the immigration laws, the Commissioner's designation shall become effective immediately upon issuance, and shall be published in the **Federal Register** as soon as practicable thereafter.

8 CFR 235.3(b)(ii).

In the alternative, the Service's immediate implementation of this Notice, with provisions for post-promulgation public comments, is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reason and necessity for the immediate promulgation of this rule is the need to deter foreign nationals from undertaking dangerous sea voyages to the United States and to detain those that are apprehended doing so. As explained in the **SUPPLEMENTARY INFORMATION**, a surge in illegal migration by sea, including the potential for a mass migration, would jeopardize or compromise the national security and, therefore, requires the immediate implementation of this Notice.

Notice of Designation of Aliens Subject to Expedited Removal Proceedings

Pursuant to section 235(b)(1)(A)(iii) of the Immigration and Nationality Act ("Act") and 8 CFR 235.3(b)(1)(ii), I order as follows:

(1) Except as provided in paragraph (5), all aliens who arrive in the United States by sea, either by boat or other means, who are not admitted or paroled, and who have not been physically present in the United States continuously for the two-year period prior to a determination of inadmissibility by a Service officer shall be placed in expedited removal proceedings. The alien has the burden affirmatively to show to the satisfaction of an immigration officer that the alien has been present in the United States continuously for the relevant two-year period. This Notice does not apply to aliens who arrive at United States ports-of-entry. This Notice does not apply to

alien crewmen or stowaways as described in the Act.

(2) Any alien who falls within this designation who indicates an intention to apply for asylum or who asserts a fear of persecution or torture will be interviewed by an asylum officer to determine whether the alien has a credible fear as defined in section 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). If that standard is met, the alien will be referred to an

immigration judge for a hearing on the merits of the protection claim or claims.

(3) An alien found to have a credible fear and subsequently placed into removal proceedings before an immigration judge will be detained, with certain humanitarian exceptions, throughout those proceedings and will not be eligible to request a bond redetermination hearing before an immigration judge.

(4) This Notice applies to aliens described in paragraph (1) who arrive in

the United States by sea on or after November 13, 2002.

(5) Expedited removal proceedings will not be initiated against Cuban citizens or nationals who arrive by sea.

Dated: November 12, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02-29038 Filed 11-12-02; 12:33 pm]

BILLING CODE 4410-10-P



Federal Register

**Wednesday,
November 13, 2002**

Part V

The President

**Notice of November 12, 2002—
Continuation of the National Emergency
With Respect to Iran**

Title 3—

Notice of November 12, 2002

The President

Continuation of the National Emergency With Respect to Iran

On November 14, 1979, by Executive Order 12170, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 2002. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year this national emergency with respect to Iran. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
November 12, 2002.

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Federal Register

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Wednesday, November 13, 2002

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Laws 741-6000

Presidential Documents

Executive orders and proclamations **741-6000**

The United States Government Manual 741-6000

Other Services

Electronic and on-line services (voice) **741-6020**

Privacy Act Compilation **741-6064**

Public Laws Update Service (numbers, dates, etc.) **741-6043**

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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

66527-67088.....	1
67089-67282.....	4
67283-67508.....	5
67509-67776.....	6
67777-68016.....	7
68017-68492.....	8
68493-68752.....	12
68753-68930.....	13

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
7615.....	67087
7616.....	67283
7617.....	67293
7618.....	67295
7619.....	67771
7620.....	67773
7621.....	67775
7622.....	68017
7623.....	68751
7624.....	68921

Executive Orders:

12170 (See Notice of November 12, 2002).....	68929
12938 (See Notice of November 6, 2002).....	68751
13094 (See Notice of November 6, 2002).....	68751

Administrative Orders:

Notices	
Notice of November 6, 2002.....	68751
Notice of November 12, 2002.....	68929

5 CFR

8301.....	67089
-----------	-------

7 CFR

301.....	67509, 67777
610.....	68495
905.....	66527
945.....	66529
948.....	68019
980.....	66529

Proposed Rules:

54.....	66576
300.....	67799
319.....	67799
956.....	66578
1000.....	67906
1001.....	67906
1005.....	67906
1006.....	67906
1007.....	67906
1030.....	67906
1032.....	67906
1033.....	67906
1124.....	67906
1126.....	67906
1131.....	67906
1135.....	67906

8 CFR

100.....	66532
103.....	66532
236.....	66532
245a.....	66532

274a.....	66532
299.....	66532

9 CFR

53.....	67089
93.....	68021
94.....	66533
98.....	68021

10 CFR

Proposed Rules:

1.....	67096
2.....	67096
7.....	67096
9.....	67096
19.....	67096
20.....	67096
26.....	67096
30.....	67096
31.....	67096
33.....	67096
39.....	67096
50.....	66578, 66588, 67096, 67800, 67096
51.....	67096
52.....	67096
54.....	67096
55.....	67096
71.....	67096
75.....	67096
100.....	67096
110.....	67096

12 CFR

201.....	67777
204.....	67777
722.....	67102
1750.....	66533

13 CFR

108.....	68498
121.....	67102, 67253

14 CFR

25.....	68753
39.....	66540, 66541, 66544, 66547, 66548, 67104, 67297, 67510, 67513, 67516, 67518, 68022, 68024, 68026, 68505, 68506, 68508, 68725, 68755
71.....	67253, 68757, 68758
73.....	67787, 67788
97.....	67106, 67299

Proposed Rules:

39.....	67131, 68047, 68052, 68536, 68779, 68782
71.....	66592, 67800, 67801, 68785

16 CFR

1700.....	66550
-----------	-------

17 CFR

1.....	67445
--------	-------

41.....67445
 190.....67445
 240.....67445
Proposed Rules:
 4.....68785
 228.....68054, 68790
 229.....68054, 68790
 240.....67496
 244.....68790
 249.....68054, 68790

18 CFR
 101.....67692
 201.....67692
 352.....67692
Proposed Rules:
 35.....67339

19 CFR
 4.....68027
 19.....68027
 122.....68027
 123.....68027
 127.....68027
 141.....68027
 142.....68027
 178.....68027
 201.....68036

21 CFR
 510.....67520, 67521
 520.....67521, 68759
 522.....67521, 68760
 524.....67521
 872.....68510
 874.....67789
Proposed Rules:
 314.....66593
 589.....67572

23 CFR
 41.....67108
 450.....68512

24 CFR
 982.....67522

26 CFR
 1.....68512
Proposed Rules:
 1.....67132, 68539
 31.....67802
 300.....67573
 301.....67132

27 CFR
Proposed Rules:
 40.....67340
 275.....67340

28 CFR
 2.....67790

29 CFR
 1910.....67950

30 CFR
 915.....67522
 917.....67524
 938.....67528
 943.....67531
 944.....67534
 950.....67540
Proposed Rules:
 948.....67576

31 CFR
 103.....67547
 356.....68513
Proposed Rules:
 103.....68540

33 CFR
 110.....68517
 117.....66552, 66553, 67108,
 67549, 67551, 68519
 165.....67110, 67301, 68760,
 68762
 401.....67112
Proposed Rules:
 110.....68540
 165.....66595, 67342

34 CFR
 2600.....67048
 2668.....67048
 2673.....67048
 2674.....67048
 2675.....67048
 2682.....67048
 2685.....67048
 2690.....67048
 2694.....67048

38 CFR
 3.....67792
 217.....66554

39 CFR
 3001.....67552

40 CFR
 2.....67303
 52.....66555, 67113, 67313,
 67563, 68521, 68764, 68767
 61.....68526
 62.....67316
 63.....68038
 80.....67317
 81.....66555, 68521, 68769
 89.....68242
 90.....68242
 91.....68242
 94.....68242
 131.....68039
 141.....68911
 180.....66561, 67566
 1048.....68242
 1051.....68242
 1065.....68242
 1068.....68242
Proposed Rules:
 52.....66598, 67345, 67580,
 68542, 68545, 68804
 61.....68546
 62.....67348
 81.....66598, 68545, 68805
 82.....67581
 131.....68079

41 CFR
 101-37.....67742
 102-33.....67742

42 CFR
 405.....66718
 410.....67318
 414.....67318
 419.....66718
Proposed Rules:
 52a.....68548

43 CFR
 3600.....68778
 8200.....68778
 8360.....68778

44 CFR
 64.....67117
 65.....67119, 67123
 67.....67125, 67126, 67128
Proposed Rules:
 67.....67132, 67133, 67135

47 CFR
 1.....67318, 67567
 27.....68079

73.....67568
Proposed Rules:
 90.....67348, 68079

48 CFR
 1808.....68533
 1845.....68533
 1851.....68533
Proposed Rules:
 1.....67762
 5.....67762
 6.....68914
 8.....68914
 9.....67282
 14.....67762
 19.....67762
 22.....67762
 36.....67762
 52.....67762, 68914
 53.....67762
 1825.....68551

49 CFR
 172.....66571
 174.....66571
 175.....66571
 176.....66571
 177.....66571
 244.....68041
 575.....67491
Proposed Rules:
 171.....66598
 192.....68815
 571.....67373, 68551
 1520.....67382
 1540.....67382
 1542.....67382
 1544.....67382
 1546.....67382
 1548.....67382

50 CFR
 17.....67968, 68004, 68450
 20.....67256
 222.....67793, 67795
 223.....67793, 67795, 68725
 635.....68045
 648.....67568
 679.....66575, 67798
Proposed Rules:
 216.....68553
 17.....66599, 67586, 67803,
 68490
 300.....67139
 600.....67140, 68556
 697.....68556

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 13, 2002**HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration**

Animal drugs, feeds, and related products:
 Deracoxib; published 11-13-02
 Gonadorelin diacetate tetrahydrate; published 11-13-02

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Onions (sweet) grown in—
 Washington and Oregon; comments due by 11-22-02; published 11-1-02 [FR 02-27765]

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

Bees, beekeeping byproducts, and beekeeping equipment; hearings; comments due by 11-18-02; published 8-19-02 [FR 02-20941]

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

Exportation and importation of animals and animal products:
 Exotic Newcastle disease; disease status change—
 Denmark; comments due by 11-19-02; published 9-20-02 [FR 02-23940]

AGRICULTURE DEPARTMENT**Grain Inspection, Packers and Stockyards Administration**

Review inspection requirements; comments due by 11-21-02; published 10-23-02 [FR 02-26922]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration
 Fishery conservation and management:

Magnuson-Stevens Act provisions—

Domestic fisheries; exempted fishing permit applications; comments due by 11-19-02; published 11-4-02 [FR 02-28008]

International fisheries regulations:

Antarctic Marine Living Resources Conservation Commission; monitoring permits and system, fishing season, registered agent, and disposition of seizures; comments due by 11-18-02; published 10-22-02 [FR 02-26872]

Pacific tuna—

Management measures; comments due by 11-18-02; published 11-4-02 [FR 02-28007]

ENERGY DEPARTMENT**Energy Efficiency and Renewable Energy Office**

Consumer products; energy conservation program:

Dishwashers; test procedures; comments due by 11-18-02; published 9-3-02 [FR 02-22315]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards, etc.:

Gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations); comments due by 11-19-02; published 9-20-02 [FR 02-23740]

Air quality implementation plans; approval and promulgation; various States:

Colorado; comments due by 11-22-02; published 10-23-02 [FR 02-26990]

Massachusetts and New Hampshire; comments due by 11-20-02; published 10-21-02 [FR 02-26709]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

North Carolina; comments due by 11-21-02; published 10-22-02 [FR 02-23582]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and

promulgation; various States:

North Carolina; comments due by 11-21-02; published 10-22-02 [FR 02-23583]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

North Carolina; comments due by 11-21-02; published 10-22-02 [FR 02-26571]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

North Carolina; comments due by 11-21-02; published 10-22-02 [FR 02-26572]

Washington; comments due by 11-22-02; published 10-23-02 [FR 02-26992]

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Halosulfuron-methyl; comments due by 11-19-02; published 9-20-02 [FR 02-23995]

Methoxyfenozide; comments due by 11-19-02; published 9-20-02 [FR 02-23996]

ENVIRONMENTAL PROTECTION AGENCY

Superfund program:

National oil and hazardous substances contingency plan—
 National priorities list update; comments due by 11-22-02; published 10-23-02 [FR 02-27130]

FARM CREDIT ADMINISTRATION

Farm credit system:

Loan policies and operations—
 Capital adequacy and related regulations; miscellaneous amendments; comments due by 11-21-02; published 10-22-02 [FR 02-26697]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Telephone Consumer Protection Act; implementation—

Unsolicited advertising; comments due by 11-22-02; published 10-8-02 [FR 02-25569]

Radio stations; table of assignments:

Oklahoma; comments due by 11-18-02; published 10-16-02 [FR 02-26228]

Various States; comments due by 11-18-02; published 10-21-02 [FR 02-26226]

**HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration**

Human drugs:

Internal analgesic, antipyretic, and antirheumatic products (OTC); tentative final monograph and related labeling; comments due by 11-19-02; published 8-21-02 [FR 02-21122]

HEALTH AND HUMAN SERVICES DEPARTMENT

Indian Child Protection and Family Violence Prevention Act; implementation:

Minimum standards of character and employment suitability of individuals in positions involving contact with Indian children; comments due by 11-22-02; published 9-23-02 [FR 02-23943]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Inspector General Office:

Subpoenas and production in response to subpoenas or demands of courts or other authorities; comments due by 11-19-02; published 9-20-02 [FR 02-23931]

**INTERIOR DEPARTMENT
Fish and Wildlife Service**

Endangered and threatened species:

Findings on petitions, etc.—
 California golden trout; comments due by 11-19-02; published 9-20-02 [FR 02-23941]

**LABOR DEPARTMENT
Occupational Safety and Health Administration**

Construction safety and health standards:

Excavation standard; regulatory review; comments due by 11-19-02; published 8-21-02 [FR 02-21221]

Safety and health standards:

Hexavalent chromium; occupational exposure;

comments due by 11-20-02; published 8-22-02 [FR 02-21449]

LABOR DEPARTMENT

Pension and Welfare

Benefits Administration

Employee Retirement Income Security Act:

Blackout period notification; civil penalties for failure to provide notice and conforming technical changes; comments due by 11-20-02; published 10-21-02 [FR 02-26523]

Blackout period notification; temporary suspension of right to direct or diversify investments, obtain loans, or obtain distribution; comments due by 11-20-02; published 10-21-02 [FR 02-26522]

STATE DEPARTMENT

Visas; nonimmigrant documentation:

Transitional Foreign Student Monitoring Program; Interim Student and Exchange Authentication System; comments due by 11-18-02; published 9-18-02 [FR 02-23625]

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

Washington; comments due by 11-22-02; published 9-30-02 [FR 02-24634]

Ports and waterways safety:

San Pedro Bay, CA; security zones; comments due by 11-22-02; published 10-28-02 [FR 02-27375]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 11-22-02; published 10-8-02 [FR 02-25604]

Hartzell Propeller, Inc.; comments due by 11-22-02; published 9-23-02 [FR 02-24018]

Pratt & Whitney; comments due by 11-19-02; published 9-20-02 [FR 02-23882]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Textron Lycoming; comments due by 11-19-02; published 9-20-02 [FR 02-24030]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Turbomeca S.A.; comments due by 11-19-02; published 9-20-02 [FR 02-23881]

Airworthiness standards:

Special conditions—
Boeing Model 777-200 series airplanes; comments due by 11-22-02; published 10-23-02 [FR 02-27035]

Bombardier Aerospace Model CL-600-2D24 (RJ900) series airplanes; comments due by 11-18-02; published 10-18-02 [FR 02-26584]

Class E airspace; comments due by 11-21-02; published 10-7-02 [FR 02-25311]

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Dromedary equipped truck tractor-semitrailers; designation as specialized equipment; comments due by 11-22-02; published 10-23-02 [FR 02-27040]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Consumer information:

Vehicle rollover resistance; dynamic rollover test and results; comments due by 11-21-02; published 10-7-02 [FR 02-25115]

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Pipeline safety:

Hazardous liquid transportation—
Hazardous liquid pipeline operator annual report form; comments due by 11-22-02; published 9-19-02 [FR 02-23837]

VETERANS AFFAIRS DEPARTMENT

Disabilities rating schedule:

Tinnitus; comments due by 11-18-02; published 9-19-02 [FR 02-23784]

VETERANS AFFAIRS DEPARTMENT

Medical benefits:

Outpatient medical services and inpatient hospital

care, non-emergency; priority to veterans with service-connected disabilities; comments due by 11-18-02; published 9-17-02 [FR 02-23312]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.nara.gov/fedreg/plawcurr.html>.

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H.R. 4013/P.L. 107-280

Rare Diseases Act of 2002 (Nov. 6, 2002; 116 Stat. 1988)

H.R. 4014/P.L. 107-281

Rare Diseases Orphan Product Development Act of 2002 (Nov. 6, 2002; 116 Stat. 1992)

H.R. 5200/P.L. 107-282

Clark County Conservation of Public Land and Natural Resources Act of 2002 (Nov. 6, 2002; 116 Stat. 1994)

H.R. 5308/P.L. 107-283

To designate the facility of the United States Postal Service located at 301 South Howes Street in Fort Collins, Colorado, as the "Barney Apodaca Post Office". (Nov. 6, 2002; 116 Stat. 2020)

H.R. 5333/P.L. 107-284

To designate the facility of the United States Postal Service located at 4 East Central Street in Worcester, Massachusetts, as the "Joseph D. Early Post Office Building". (Nov. 6, 2002; 116 Stat. 2021)

H.R. 5336/P.L. 107-285

To designate the facility of the United States Postal Service located at 380 Main Street in Farmingdale, New York, as the "Peter J. Ganci, Jr. Post

Office Building". (Nov. 6, 2002; 116 Stat. 2022)

H.R. 5340/P.L. 107-286

To designate the facility of the United States Postal Service located at 5805 White Oak Avenue in Encino, California, as the "Francis Dayle 'Chick' Hearn Post Office". (Nov. 6, 2002; 116 Stat. 2023)

H.R. 3253/P.L. 107-287

Department of Veterans Affairs Emergency Preparedness Act of 2002 (Nov. 7, 2002; 116 Stat. 2024)

H.R. 4015/P.L. 107-288

Jobs for Veterans Act (Nov. 7, 2002; 116 Stat. 2033)

H.R. 4685/P.L. 107-289

Accountability of Tax Dollars Act of 2002 (Nov. 7, 2002; 116 Stat. 2049)

H.R. 5205/P.L. 107-290

To amend the District of Columbia Retirement Protection Act of 1997 to permit the Secretary of the Treasury to use estimated amounts in determining the service longevity component of the Federal benefit payment required to be paid under such Act to certain retirees of the Metropolitan Police Department of the District of Columbia. (Nov. 7, 2002; 116 Stat. 2051)

H.R. 5574/P.L. 107-291

To designate the facility of the United States Postal Service located at 206 South Main Street in Glennville, Georgia, as the "Michael Lee Woodcock Post Office". (Nov. 7, 2002; 116 Stat. 2052)

Last List November 7, 2002

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