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# Federal Register

3–25–03 Tuesday
Vol. 68 No. 57 Mar. 25, 2003
Pages 14307–14526

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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 20

**RIN 3150–AH07**

### Radiation Exposure Reports: Labeling Personal Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its filing requirements for written event reports submitted to the NRC concerning individuals occupationally overexposed to radiation and radioactive materials. Licensees will be required to clearly label any section of the event report containing personal information ''Privacy Act Information: Not for Public Disclosure.'' This action is necessary to ensure that personal information filed with the NRC is segregated from the event report and maintained in a separate, non-public document.

**EFFECTIVE DATE:** The final rule is effective June 9, 2003, unless significant adverse comments are received by April 24, 2003. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

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**FOR FURTHER INFORMATION CONTACT:** Merri Horn, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–8126, e-mail *mlh1@nrc.gov*.

**SUPPLEMENTARY INFORMATION:** The NRC requires licensees to file written reports within 30 days after learning of any occupational exposure to radiation or radioactive materials that exceeds the constraints or limits set out in §§ 20.2202 and 20.2203. These records contain personal information that is protected from public disclosure by the Privacy Act of 1974, Public Law 93–579, 5 U.S.C. 552a, and the Commission's regulations in 10 CFR part 9.

Currently, each report is required to be prepared so that personal information such as an individual's name, social security number, and date of birth is contained in a separate and detachable part of the report. However, the regulations do not require that the report be marked in any way to indicate the information should be protected as privacy information. The intent of the separate report was to keep the sensitive personal information out of the publically accessible environment. Documents received by the NRC are placed directly into the Agency-Wide Documents Access and Management System (ADAMS) unless they are marked as sensitive or controlled. In order for the Agency's document control personnel to properly process this section of the report as a non-public document, licensees will be required to clearly label this section with the following notation: ''Privacy Act Information: Not for Public Disclosure.'' This labeling will ensure that personal information filed with exposure event reports will not be accessible by the public through the NRC's document control system, ADAMS.

### Procedural Background

Because this amendment involves only a minor amendment to existing regulations and it is not expected to be controversial, the NRC is using the direct final rule process for this rule. The amendments to the rule will become effective on June 9, 2003. However, if the NRC receives significant adverse comments on this direct final rule by April 24, 2003, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive

response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

**Agreement State Compatibility**

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this direct final rule is classified as compatibility ''C.'' Category C means the provisions affect a program element, the essential objectives of which should be adopted by the State to avoid conflicts, duplications, or gaps in the national program. The manner in which the essential objectives are addressed need not be the same as NRC, provided the essential objectives are met. This amendment is not expected to impact existing Agreement States regulations. The content of the event report is not being changed by this rule and each State has its own method for protecting privacy information.

**Plain Language**

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

**Voluntary Consensus Standards**

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC is adding a labeling requirement to protect privacy information. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

**Environmental Impact: Categorical Exclusion**

The NRC has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

**Paperwork Reduction Act Statement**

This direct final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0014.

**Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

**Regulatory Analysis**

A regulatory analysis has not been prepared for this regulation. The rule imposes an insignificant regulatory burden on licensees by requiring that privacy information contained in event reports be labeled. The information is already required to be in a separate, detachable section of the event report. The labeling will ensure that personal information filed with exposure event reports will not be inadvertently released to the public through ADAMS. Many licensees already label the privacy information.

**Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is necessary to reflect the nuclear non-proliferation policies of the Executive branch and U.S. Government obligations under nuclear agreements for cooperation. This rule will only affect licensees when filing Radiation Exposure Reports for occupationally overexposed individuals. Affected licensees will be required to label the portion of the report containing personal information to indicate that such information should not be made available to the public. This final rule has a minimal impact on licensee filing procedures and imposes no additional economic burden on affected licensees.

**Backfit Analysis**

The NRC has determined that the backfit rule as defined in 10 CFR Chapter I does not apply to reporting requirements such as those reporting requirements contained in this final rule. Since this final rule does not involve any provisions that would impose backfits as defined in the backfit rule, a backfit analysis is not required.

**Small Business Regulatory Enforcement Fairness Act**

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

**List of Subjects in 10 CFR Part 20**

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 20.

## PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

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

**Authority:** Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. In § 20.2203, paragraph (b)(2) is revised to read as follows:

**§ 20.2203 Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits.**

* * * * *

(b) * * *

(2) Each report filed pursuant to paragraph (a) of this section must include for each occupationally overexposed [1] individual: the name, Social Security account number, and

[1] With respect to the limit for the embryo/fetus (§ 20.1208), the identifiers should be those of the declared pregnant woman.

date of birth. The report must be prepared so that this information is stated in a separate and detachable part of the report and must be clearly labeled ''Privacy Act Information: Not for Public Disclosure.''

* * * * *

Dated at Rockville, Maryland, this 11th day of March, 2003.

For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 03–7030 Filed 3–24–03; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–100–AD; Amendment 39–13070; AD 2003–04–21 R1]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects information in an existing airworthiness directive (AD) that applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 440) series airplanes. That AD currently requires replacement of the overwing emergency exit placards, door weight placards, and no baggage placards with new placards. This document corrects the applicability of AD 2003–04–21 to identify affected model designations as published in the most recent type certificate data sheet. This correction is necessary to ensure that operators of all affected airplanes accomplish the requirements of this AD.

**DATES:** Effective April 4, 2003.

The incorporation by reference of a certain publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 4, 2003 (68 FR 9509, February 28, 2003).

**FOR FURTHER INFORMATION CONTACT:** Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** On February 19, 2003, the Federal Aviation Administration (FAA) issued AD 2003–04–21, amendment 39–13070 (68 FR 9509, February 28, 2003), which applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 440) series airplanes. That AD requires replacement of the overwing emergency exit placards, door weight placards, and no baggage placards with new placards. That AD was prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions required by that AD are intended to prevent the inability of a passenger to open and dispose of the overwing emergency exit door during an emergency evacuation due to incorrect placards.

### Need for the Correction

In the preamble of AD 2003–04–21 under the heading ''Explanation of Change to Applicability,'' it states, ''[The FAA has] revised the applicability of the final rule to identify model designations as published in the most recent type certificate data sheet for the affected models.'' We revised the applicability of the final rule to include the parenthetical ''(Regional Jet Series 440).'' However, we inadvertently omitted Regional Jet Series ''100,'' which is specified on the type certificate data sheet. In addition, both of these airplane models were identified by serial numbers in the applicability. Therefore, the correct applicability of this AD is ''Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes.''

We have determined that a correction to AD 2003–04–21 is necessary. We have clarified the applicability of this AD by identifying the affected model designations as published in the most recent type certificate data sheet.

### Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains April 4, 2003.

Since this action only corrects the applicability of AD 2003–04–21 to identify affected model designations as published in the most recent type certificate data sheet, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Correction

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 [Corrected]**

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

**2003–04–21 R1 Bombardier, Inc. (Formerly Canadair):** Amendment 39–13070. Docket 2002–NM–100–AD.

*Applicability:* Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, having the serial numbers listed in the following table:

TABLE—SERIAL NUMBERS

| Serial Nos. |
|---|
| 7003 through 7434 inclusive. |
| 7436 through 7442 inclusive. |
| 7444 through 7452 inclusive. |
| 7454 through 7458 inclusive. |
| 7460 through 7497 inclusive. |
| 7499 through 7504 inclusive. |

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the inability of a passenger to open and dispose of the overwing emergency exit door during an emergency evacuation due to incorrect placards, accomplish the following:

**Replacement of Placards**

(a) Within 12 months after the effective date of this AD, replace the overwing emergency exit placards, door weight

placards, and no baggage placards with new placards (including cleaning of the applicable surface), as applicable, per Bombardier Alert Service Bulletin A601R–11–077, Revision 'A,' dated December 11, 2001, excluding Service Bulletin Comment Sheet-Facsimile Reply Sheet and CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet.

(b) Replacement accomplished before the effective date of this AD per Bombardier Alert Service Bulletin A601R–11–077, dated July 12, 2001, is considered acceptable for compliance with the replacement specified in paragraph (a) 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, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

**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 Bombardier Alert Service Bulletin A601R–11–077, Revision 'A,' dated December 11, 2001, excluding Service Bulletin Comment Sheet-Facsimile Reply Sheet and CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet. This incorporation by reference was approved previously by the Director of the Federal Register as of April 4, 2003 (68 FR 9509, February 28, 2003). Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Canadian airworthiness directive CF–2002–12, dated February 4, 2002.

**Effective Date**

(f) The effective date of this amendment remains April 4, 2003.

Issued in Renton, Washington, on March 17, 2003.

**Michael J. Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–6992 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–31–AD; Amendment 39–12694; AD 2002–06–16]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 767–300 Airplanes That Have Been Modified in Accordance With Supplemental Type Certificate (STC) ST00973WI–D

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a typographical error that appeared in airworthiness directive (AD) 2002–06–16 that was published in the **Federal Register** on April 2, 2002 (67 FR 15468). The typographical error resulted in reference to an incorrect STC number. This AD is applicable to certain Boeing Model 767–300 airplanes. This AD requires removing each sidewall-mounted reading light in the attendant crew rest compartment, installing cover plates in place of the existing reading lights, removing each reading light switch, and installing a new reading light in place of the existing light switch.

**DATES:** Effective April 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Park, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4123; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:** Airworthiness Directive (AD) 2002–06–16, amendment 39–12594, applicable to certain Boeing Model 767–300 airplanes, was published in the **Federal Register** on April 2, 2002 (67 FR 15468). That AD requires removing each sidewall-mounted reading light in the attendant crew rest compartment, installing cover plates in place of the existing reading lights, removing each reading light switch, and installing a new reading light in place of the existing light switch.

As published, that AD specifies that the referenced STC number is STC00973WI–D in the Subject Heading (Airworthiness Directives) and Supplementary Information section of the preamble of the AD, as well as in the regulatory text of the Applicability section of the AD. The FAA finds that correction of a typographical error in that STC number is necessary. Where the existing AD specifies the STC number as STC00973WI–D, this AD replaces that incorrect STC number with the correct STC number, ST00973WI–D.

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register**.

The effective date of this AD remains April 17, 2002.

Nonregulatory text:

On page 15468 in the first column under the subject heading, ''Airworthiness Directives,'' reference to ''STC00973WI–D'' is corrected to ''ST00973WI–D'' and reads as follows:

* * * * *

Airworthiness Directives; Boeing Model 767–300 Airplanes That Have Been Modified in Accordance with Supplemental Type Certificate (STC) ST00973WI–D

* * * * *

On page 15468 in the second column under the heading, **SUPPLEMENTARY INFORMATION,** in the second sentence, reference to ''STC00973WI–D'' is corrected to ''ST00973WI–D'' and reads as follows:

* * * * *

The sidewall-mounted reading lights in the attendant crew rest compartment of those airplanes have been modified in accordance with Supplemental Type Certificate (STC) ST00973WI–D.

* * * * *

Regulatory text:

## PART 39—AIRWORTHINESS DIRECTIVES

**§ 39.13 [Corrected]**

On page 15469 under the ''Applicability'' section of AD 2002–06–16, reference to ''STC00973WI–D'' is corrected to ''ST00973WI–D'' and reads as follows:

* * * * *

*Applicability:* Model 767–300 airplanes that have been modified in accordance with Supplemental Type Certificate ST00973WI–D; certificated in any category.

* * * * *

Issued in Renton, Washington, on March 17, 2003.

**Michael J. Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–6993 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NE–47–AD; Amendment 39–13089; AD 2003–06–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Hartzell Propeller Inc. Model HC–C2Y(K,R)–1BF/F8477–4 Propellers

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), that is applicable to certain Hartzell Propeller Inc. model HC–C2Y(K,R)–1BF/F8477–4 propellers with TKS (Aircraft De-icing) Ltd. anti-ice boots that were installed by SOCATA–Groupe AEROSPATIALE, the aircraft manufacturer, using TKS Ltd. Procedure P232, Specification for the Attachment of Propeller Overshoes. This amendment requires removal of the anti-ice boots, inspection and rework of the anti-ice boot area of the propeller blades, and installation of new anti-ice boots. This amendment is prompted by a report of TKS (Aircraft De-icing) Ltd. anti-ice boots on the blades of a model HC–C2Y(K,R)–1BF/F8477–4 propeller that were installed by SOCATA–Groupe AEROSPATIALE using processes that could lead to blade corrosion and failure. The actions specified by this AD are intended to prevent propeller blade separation, damage to the airplane, and possible loss of the airplane.

**DATES:** Effective April 29, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 29, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7031; fax (847) 294–7834.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to certain Hartzell Propeller Inc. model HC–C2Y(K,R)–1BF/F8477–4 propellers with TKS (Aircraft De-icing) Ltd. anti-ice boots that were installed by SOCATA–Groupe AEROSPATIALE, the aircraft manufacturer, using TKS Ltd. Procedure P232, Specification for the Attachment of Propeller Overshoes was published in the **Federal Register** on November 21, 2002 (67 FR 70185). That action proposed to require removal of the anti-ice boots, inspection and rework of the anti-ice boot area of the propeller blades, and installation of new anti-ice boots in accordance with Hartzell Propeller Inc. Alert Service Bulletin (ASB) HC–ASB–61–251, dated April 10, 2001.

### Comments

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

### Economic Analysis

There are approximately 750 Hartzell Propeller Inc. model HC–C2Y(K,R)–1BF/F8477–4 propellers with TKS (Aircraft De-icing) Ltd. anti-ice boots installed by SOCATA–Groupe AEROSPATIALE, the aircraft manufacturer, using TKS Ltd. Procedure P232, Specification for the Attachment of Propeller Overshoes. The FAA estimates that 230 propellers installed on airplanes of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 10 work hours per propeller to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $900 per propeller. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $345,000.

### Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2003–06–02 Hartzell Propeller Inc.:** Amendment 39–13089. Docket No. 2001–NE–47–AD.

*Applicability:* This airworthiness directive (AD) is applicable to Hartzell Propeller Inc. model HC–C2Y(K,R)–1BF/F8477–4 propellers with TKS (Aircraft De-icing) Ltd. anti-ice boots that were installed by SOCATA-Groupe AEROSPATIALE, the aircraft manufacturer, using TKS Ltd. Procedure P232, Specification for the Attachment of Propeller Overshoes. These propellers are installed on, but not limited to American Champion 8GCBC, Cessna 170 series, 172 series, 175 series, Piper PA–18 series, Sky International Inc. (Husky) A–1 (previous owners were Christen Industries; Aviat, Inc.; White International, LTD.), and

SOCATA–Groupe AEROSPATIALE TB–20 and TB–21 airplanes.

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

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

To prevent propeller blade separation, damage to the airplane, and possible loss of the airplane, do the following:

(a) For propellers that have been overhauled after the installation of TKS (Aircraft De-icing) Ltd. Anti-ice boots, and have had the anti-ice boots re-installed using Hartzell Manual 133C (ATA 61–13–33) ''Aluminum Blade Overhaul'', AS&T Procedure 4700INS, or other approved procedures (excluding TKS Procedure P232) no further action is required.

(b) For propellers that have had the anti-ice boots installed using the TKS Procedure P232, but have not had anti-ice boots re-installed using Hartzell Manual 133C (ATA 61–13–33) ''Aluminum Blade Overhaul'', AS&T Procedure 4700INS, or other approved procedures (excluding TKS Procedure P232), remove anti-ice boots, inspect and rework anti-ice boot areas of propeller blades, and install new anti-ice boots in accordance with paragraph 3 of the Accomplishment Instructions of Hartzell Propeller Inc. Alert Service Bulletin (ASB) HC–ASB–61–251, dated April 10, 2001 using the compliance schedule in Table 1 as follows:

TABLE 1.—COMPLIANCE SCHEDULE

| For propellers with: | Replace anti-ice boots: |
|---|---|
| (1) Fewer than 500 hours time-in-service (TIS) and less than 3 years time-since-new (TSN). | Within 200 hours TIS from the effective date of this AD, not to exceed 600 hours TSN, or prior to accumulating 4 years TSN, whichever occurs first. |
| (2) Five hundred or more hours TIS, or 3 years or more TSN but less than 6 years TSN. | Within 100 hours TIS, or 1 year from the effective date of this AD, whichever occurs first. |
| (3) Six years or more TSN | Within 50 hours TIS, or within 6 months from the effective date of this AD, whichever occurs first. |

**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, Chicago Certification Office. Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Certification Office.

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

**Special Flight Permits**

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

**Documents That Have Been Incorporated by Reference**

(e) The actions must be done in accordance with Hartzell Propeller Inc. Alert Service Bulletin HC–ASB–61–251, dated April 10, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(f) This amendment becomes effective on April 29, 2003.

Issued in Burlington, Massachusetts, on March 12, 2003.

**Mark C. Fulmer,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 03–6676 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 95–ANE–64–AD; Amendment 39–13094; AD 97–09–02R2]**

**RIN 2120–AA64**

## Airworthiness Directives; CFM International (CFMI) CFM56–5C Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD) that is applicable to CFMI CFM56–5C series turbofan engines. That AD currently establishes new life limits for certain low pressure turbine rotor (LPTR) stage 3 disks and certain high pressure turbine rotor (HPTR) disks. This action removes the LPTR stage 3 disks and the HPTR disks from the parts listed with lowered life limits in the existing AD. This amendment is prompted by the results of an extensive life management program completed by the manufacturer, which no longer requires lower life limits for the LPTR stage 3 disks and HPTR disks listed in the existing AD. The actions specified in this AD are intended to prevent low-cycle-fatigue (LCF) failure of certain HPTR front shafts, HPTR front air seals, and booster spools, which could result in an uncontained engine failure and damage to the airplane.

**DATES:** Effective April 29, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 27, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–ANE–64–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

**FOR FURTHER INFORMATION CONTACT:** James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate,12 New England Executive Park, Burlington, MA 01803–

5299; telephone (781) 238–7152; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** On August 29, 2002, the FAA issued AD 97–09–02R1, Amendment 39–12876 (67 FR 57146, September 9, 2002), applicable to CFMI CFM56–5C series turbofan engines, to reduce the LCF retirement lives of certain HPTR front shafts, HPTR front air seals, HPTR disks, booster spools, and LPTR stage 3 disks. Since AD 97–09–02R1 was issued, the manufacturer conducted an extensive life management program for the LPTR stage 3 disks and HPTR disks listed in the AD. The results indicated higher LCF retirement lives for those LPTR stage 3 disks and HPTR disks than the lives published in AD 97–09–02R1. Those LCF retirement lives are now the same as originally calculated and are in accordance with the current airworthiness limitations section of Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI–TP.SM.8. Therefore, this AD revision removes LPT stage 3 disks, part numbers (P/Ns) 337–001–602–0 and 337–001–605–0, and HPTR disks, P/N 1498M43P04, from the parts listed with lower LCF retirement lives. The LCF retirement lives of the HPTR front air seals P/N 1523M34P02 and P/N 1523M34P03, and HPT front shafts P/N 1498M40P03, 1498M40P05, and 1498M40P06, and booster spools P/N 337–005–210–0, remain unchanged.

## FAA's Determination of an Unsafe Condition and Required Actions

Although these affected engine models are not used on any airplanes that are registered in the United States, the possibility exists these engine models could be used on airplanes that are registered in the United States in the future. This AD requires the LCF retirement lives of HPTR front air seals P/N 1523M34P02 and P/N 1523M34P03, and HPT front shafts P/N 1498M40P03, 1498M40P05, and 1498M40P06, and booster spools P/N 337–005–210–0 to remain as they were published in AD 97–09–02R1.

## Immediate Adoption of This AD

Since there are currently no domestic operators of CFM56–5C series turbofan engines, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

## Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, 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 action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–ANE–64–AD.'' The postcard will be date stamped and returned to the commenter.

## Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12876 (67 FR 57146, September 9, 2002) and by adding the following new airworthiness directive:

**97–09–02R2 CFM International:** Amendment 39–13094. Docket No. 95–ANE–64–AD.

*Applicability:* This airworthiness directive (AD) is applicable to CFM International (CFMI) CFM56–5C2/G, –5C3/G, and –5C4 series turbofan engines. These engines are installed on, but not limited to, Airbus Industrie A340 series airplanes.

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

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

To prevent low cycle fatigue (LCF) failure of the high pressure turbine rotor (HPTR) front shaft, HPTR front air seal, and booster spool, which could result in an uncontained failure and damage to the airplane, do the following:

(a) Remove from service HPTR front shafts, part numbers (P/Ns) 1498M40P03, 1498M40P05, and 1498M40P06, before accumulating 8,400 cycles-since-new (CSN), and replace with a serviceable part.

(b) Remove from service HPTR front air seals, P/Ns 1523M34P02 and 1523M34P03, before accumulating 4,000 CSN, and replace with a serviceable part.

(c) LCF retirement lives for HPTR disks P/N 1498M43P04 are now the same as originally calculated and are in accordance with the current airworthiness limitations section of Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI–TP.SM.8.

(d) Remove from service booster spools, P/N 337–005–210–0, before accumulating 13,000 CSN, and replace with a serviceable part.

(e) For CFM56–5C4 engines, LCF retirement lives for low pressure turbine rotor (LPTR) stage 3 disks, P/Ns 337–001–602–0 and 337–001–605–0 are now the same as originally calculated and are in accordance with the current airworthiness limitations section of Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI–TP.SM.8.

(f) For CFM56–5C2/G and –5C3/G engines, LCF retirement lives for LPTR stage 3 disks, P/Ns 337–001–602–0 and 337–001–605–0 are now the same as originally calculated and are in accordance with the current airworthiness limitations section of Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI–TP.SM.8.

(g) This action establishes the new LCF retirement lives stated in paragraphs (a) through (f) of this AD, which are published in Chapter 05 of the CFM56–5C Engine Shop Manual, CFMI–TP.SM.8.

(h) For the purpose of this AD, a serviceable part is one that has not exceeded its respective new life limit as set out in this AD.

**Alternative Methods of Compliance**

(i) 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, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

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

**Special Flight Permits**

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

**Effective Date**

(k) This amendment becomes effective on April 29, 2003.

Issued in Burlington, Massachusetts, on March 19, 2003.

**Peter A. White,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 03–7003 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–14596; Airspace Docket No. 03–ACE–19]**

## Modification of Class E Airspace; Greenfield, IA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action modifies Class E airspace at Greenfield, IA. An examination of controlled airspace for Greenfield, IA revealed discrepancies in the Greenfield Municipal Airport, IA airport reference point used in the legal description for the Greenfield, IA Class E airspace area. This action corrects the discrepancies by modifying the Greenfield, IA Class E airspace area. It also incorporates the revised Greenfield Municipal Airport, IA airport reference point in the Class E airspace legal description.

**DATES:** This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 1, 2003.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14596/Airspace Docket No. 03–ACE–19, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Greenfield, IA. An examination of controlled airspace for Greenfield, IA revealed discrepancies in the Greenfield Municipal Airport, IA airport reference point used in the legal description for this airspace area. This amendment incorporates the revised Greenfield Municipal Airport, IA airport reference point and brings the legal description of the Greenfield, IA Class E airspace area into compliance with the FAA Order 7400.2E, Procedures for Handling Airspace Matters. This 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. 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 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**

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14596/Airspace Docket No. 03–ACE–19.'' The postcard will be date/time 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, 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, 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 IA E5 Greenfield, IA**

Greenfield Municipal Airport, IA
Lat. 41°19′37″ N., long. 94°26′45″ W.)
Greenfield NDB
Lat. 41°19′32″ N., long. 94°26′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Greenfield Muncipal Airport and within 2.6 miles each side of the 142° bearing from the Greenfield NDB extending from the 6-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on March 11, 2003.

**Paul J. Sheridan,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 03–7074 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2002–14129; Airspace Docket No. 02–ACE–14]**

## Establishment of Class E Surface Area Airspace and Modification of Class E Airspace; Jefferson City, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects a final rule that was published in the **Federal Register** on Wednesday, March 12, 2003, (68 FR 11738). It corrects an error in the legal description of Class E5 airspace at Jefferson City, MO.

**EFFECTIVE DATE:** This direct final rule is effective on 0901 UTC, April 17, 2003.

**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:**

**History**

*Federal Register* document 03–5927 published on Wednesday, March 12, 2003, (68 FR 11738) established a Class E surface area and modified the Class E4 and Class E5 airspace areas at Jefferson City, MO. The Class E5 airspace area extension designed to protect aircraft on instrument approaches from the southeast was incorrectly identified as extending to the southwest of the airport.

Accordingly, pursuant to the authority delegated to me, the Class E5 airspace at Jefferson City, MO, as published in the **Federal Register** on Wednesday, March 12, 2003, (68 FR 11738), (FR Doc. 03–5927), is corrected as follows:

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

**§ 71.1 [Corrected]**

On page 11739, Column 3, first paragraph, last line change ''11.8 miles southwest of the airport.'' to read ''11.8 miles southeast of the airport.''

Issued in Kansas City, MO, on March 12, 2003.

**Paul J. Sheridan,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 03–7072 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–M

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## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 240

**[Release No. 34–39176A; File No. S7–21–96]**

**RIN 3235–AG99**

## Lost Securityholders; Technical Amendment

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Technical amendment.

**SUMMARY:** This document contains a technical amendment to the final regulation which was published on Tuesday, October 7, 1997, (62 FR 52229). This regulation addresses the problem of ''lost securityholders'' contained in § 270.17Ad–17.

**EFFECTIVE DATE:** March 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jerry W. Carpenter, Assistant Director, or Lori R. Bucci, Special Counsel, at 202/942–4187, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 1, 1997, the Commission adopted Rule 17Ad–17 which requires transfer agents to conduct searches in an

effort to locate lost securityholders.[1] Rule 17Ad–17(b)(1)(i) contains an error. In the document published in the **Federal Register**, the clause ''contains the names of at least 50% of the United States geographic area,'' was added to the rule language containing the definition of ''information data base service.'' That language was not approved by the Commission and did not appear in the adopting release. This correction restores the language of paragraph (b)(1)(i) to that adopted by the Commission.

As published, the final regulation contains an error which needs to be corrected.

**List of Subjects in 17 CFR Part 240**

Reporting and recordkeeping requirements, Securities, Transfer agents.

Accordingly, Title 17 CFR Part 240 is corrected by making the following technical amendment:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. In § 240.17Ad–17(b)(1)(i), the phrase ''contains the names of at least 50% of the United States geographic area,'' is removed.

Dated: March 18, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–6986 Filed 3–24–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 17 CFR 240.17Ad–17. Securities Exchange Act Release No. 39176 (October 1, 1997), 62 FR 52229 (October 7, 1997).

## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

### 20 CFR Parts 1 and 30

**RIN 1215–AB32**

### Performance of Functions Under This Chapter; Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act of 2000, as Amended

**AGENCY:** Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

**ACTION:** Final rule; compliance with information collection requirements.

**SUMMARY:** The Office of Workers' Compensation Programs (OWCP) is announcing that a revision of a currently approved collection of information has been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995, for the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended. This notice announces both the OMB approval number and expiration date.

**DATES:** *Effective Date:* The final rule published at 67 FR 78874 continues to be effective as of February 24, 2003.

*Compliance Date:* As of March 25, 2003, affected parties must comply with the new information collection requirements in §§ 30.112 and 30.213 of the final rule, which have been approved as a revision of a currently approved collection by OMB under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

**FOR FURTHER INFORMATION CONTACT:** Shelby Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–693–0036 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On December 26, 2002, OWCP published a final rule governing its administration of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA), 42 U.S.C. 7384 *et seq.*, and requested OMB approval under the PRA of a revision of a currently approved collection for the EEOICPA. The new information collection requirements that needed OMB approval are in §§ 30.112 and 30.213 of the final rule.

On March 17, 2003, OMB approved the requested revision to a currently approved collection for the EEOICPA. This particular collection now consists of the following forms/reporting requirements: EE–1, Claim for Benefits Under Energy Employees Occupational Illness Compensation Program Act; EE–2, Claim for Survivor Benefits Under Energy Employees Occupational Illness Compensation Program Act; EE–3, Employment History for Claim Under Energy Employees Occupational Illness Compensation Program Act; EE–4, Employment History Affidavit for Claim Under the Energy Employees Occupational Illness Compensation Program Act; EE–7, Medical Requirements Under the Energy Employees Occupational Illness Compensation Program Act; EE/EN–8, letter to claimant requesting information for lung cancer claim; EE/EN–9, letter to claimant requesting information for skin cancer claim; EE/EN–20, Acceptance of Payment Under the Energy Employees Occupational Illness Compensation Program Act; EE–915, Claim for Medical Reimbursement Under the Energy Employees Occupational Illness Compensation Program Act; 20 CFR 30.112, supplemental employment evidence required when an alleged employment history cannot be verified; and 20 CFR 30.214, supplemental medical evidence required when an injury, illness or disability is allegedly sustained as a consequence of a covered occupational illness.

The control number assigned to this information collection by OMB is 1215–0197. The approval for this information collection will expire on July 31, 2004.

Signed at Washington, DC, this 18th day of March, 2003.

**Shelby Hallmark,**

*Director, Office of Workers' Compensation Programs, Employment Standards Administration.*

[FR Doc. 03–7013 Filed 3–24–03; 8:45 am]

BILLING CODE 4510–CR–P

## DEPARTMENT OF THE TREASURY

### 26 CFR Part 301

**[TD 9050]**

**RIN 1545–AY08**

### Civil Cause of Action for Damages Caused by Unlawful Tax Collection Actions, Including Actions Taken in Violation of Section 362 or 524 of the Bankruptcy Code

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to civil causes of action for damages caused by unlawful collection actions of officers and employees of the IRS and the awarding of costs and certain fees. The regulations reflect amendments made by the Taxpayer Bill of Rights 2 and the Internal Revenue Service Restructuring and Reform Act of 1998. The regulations affect all persons who suffer damages caused by unlawful collection actions of officers or employees of the IRS.

**EFFECTIVE DATE:** These regulations are effective March 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kevin B. Connelly, (202) 622–3630 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background

This document contains final amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to civil actions for damages caused by unlawful collection actions of officers or employees of the IRS. The Taxpayer Bill of Rights 2 (TBOR2), Public Law 104–168 (110 Stat. 1465), amended section 7433 of the Internal Revenue Code of 1986 (Code) by increasing the maximum amount of damages a taxpayer may be awarded for unlawful collection actions from $100,000 to $1,000,000. TBOR2 also eliminated the jurisdictional requirement that administrative remedies be exhausted before a court may award damages; TBOR2 authorized the court, however, to reduce damages if it determined that the plaintiff did not exhaust administrative remedies. These TBOR2 provisions were effective for actions of IRS officers or employees after July 30, 1996. The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685), although retaining the pre-existing authorization for an award of damages in the case of reckless or intentional disregard of the Code or regulations, amended section 7433(a) by providing that taxpayers may file actions for damages caused by the negligent disregard of the Code or regulations. RRA 1998 also added subsection (e) to section 7433. This amendment provides that an action for damages could be brought for the IRS's willful violation of section 362 (relating to the automatic stay) or section 524 (relating to the effect of discharge) of the Bankruptcy Code. Actions for damages caused by the violation of section 362 or 524 of the Bankruptcy Code are limited to willful violations. The maximum amount of damages that may be awarded for negligent disregard under section 7433(a) is $100,000. The maximum amount of damages that may be awarded for reckless or intentional disregard under subsection (a) or for willful violations of section 362 or 524 of the Bankruptcy Code under subsection (e) is $1,000,000. RRA 1998 also reinstated the requirement under section 7433 that the plaintiff must exhaust administrative remedies before a court may award damages. These RRA 1998 provisions apply to actions of IRS officers or employees after July 22, 1998.

RRA 1998 also added section 7426(h), which authorizes persons who bring wrongful levy actions under section 7426 to sue for damages caused by the reckless or intentional, or negligent, disregard of any provision of the Code, plus costs of the action. Consistent with section 7433, damages awarded under section 7426(h) are limited to $1,000,000 for reckless or intentional disregard and $100,000 for negligent disregard. In addition, a plaintiff must exhaust administrative remedies before a court may award damages under section 7426(h). The provisions of section 7433 relating to mitigation and the period for bringing an action also apply to actions brought under section 7426(h). IRS published a notice of proposed rulemaking reflecting these changes in the **Federal Register** on March 5, 2002. (67 FR 9929). No written comments on the proposed regulations were received. No public hearing was held.

## Explanation of Provisions

*Section 301.7426–2*

RRA 1998 added subsection (h) to section 7426. Subsection (h) authorizes persons to sue the United States in Federal district court for damages due to a wrongful levy caused by the reckless or intentional, or negligent, disregard of a provision of the Code. Plaintiffs may recover the lesser of actual direct economic damages and costs of the action or $1,000,000 ($100,000 in the case of negligence). The amendment also provided that the rules of section 7433(d) relating to exhaustion of administrative remedies, mitigation of damages, and the period for bringing an action shall apply. The regulations thus adopt rules like those promulgated under section 7433. Plaintiffs must mitigate damages and no damages may be awarded unless the court determines that the plaintiff has exhausted administrative remedies available within the IRS, *e.g.,* by filing an administrative claim for damages. The regulations provide that any action for damages under this section must be brought within two years after the date the action accrues. This two-year limitations period is independent of the nine-month period following the wrongful levy during which the third party may make a claim for wrongfully levied property.

*Section 301.7430–8*

Section 7430 provides that reasonable administrative costs may be awarded to the prevailing party in an administrative proceeding brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under Title 26 of the United States Code. Prior to the amendments in RRA 1998, taxpayers generally were not entitled to recover costs for administrative proceedings in connection with collection matters. Accordingly, the current regulations exclude such collection matters, including proceedings under sections 7432 and 7433, from the definition of administrative proceedings. To reflect the RRA 1998 amendments, the regulations expand the definition of an administrative proceeding to include any administrative action for damages under section 7433(e) and any procedure or action brought before the IRS seeking relief with respect to a violation by the IRS of section 362 or 524 of the Bankruptcy Code.

The regulations provide that the prevailing party is a party who establishes that, in connection with the collection of his or her federal tax, the IRS has willfully violated a provision of section 362 or 524 of the Bankruptcy Code. The only administrative costs that may be awarded are those incurred after the date of the bankruptcy petition that gave rise to the section 362 stay or section 524 discharge injunction.

A claim with the IRS for administrative costs must be filed within 90 days after the date the IRS mails its decision on the taxpayer's administrative claim for damages under § 301.7433–2(e) or claim for relief from a violation of section 362 or 524 of the Bankruptcy Code.

*Section 301.7433–1*

Section 3102 of RRA 1998 amended section 7433(a) of the Code by providing that a taxpayer may sue the United States in a district court of the United States for damages caused by the negligent disregard of the Code or regulations in connection with the collection of the taxpayer's tax liability. Section 801 of TBOR2 amended section 7433(b) by increasing the maximum amount of damages that a taxpayer may recover for damages caused by the reckless or intentional disregard of the Code or regulations from $100,000 to

$1,000,000. Section 3102 of RRA 1998 caps the amount of damages that a taxpayer may recover for negligent disregard at $100,000. The regulations under § 301.7433–1 reflect these changes.

*Section 301.7433–2*

RRA 1998 also amended section 7433 by adding subsection (e). Subsection (e) gives taxpayers the right to petition the bankruptcy court to recover damages if, in connection with the collection of a Federal tax, any officer or employee of the IRS willfully violates section 362 or 524 of the Bankruptcy Code or any regulation promulgated thereunder. Damages in connection with a claim under section 7433(e) for willful violations of section 362 or 524 are recoverable under section 7433(b) and are subject to the limitations imposed by section 7433(d). Under section 7433(b), if the IRS is found liable, the plaintiff may recover an amount equal to the lesser of $1,000,000 or the actual, direct economic damages sustained by the plaintiff as a proximate result of the IRS's willful action plus costs of the action. A plaintiff may not recover damages for the mere negligent violation of section 362 or 524 of the Bankruptcy Code.

Section 362 relates to the automatic stay, which arises by operation of law when a debtor files a bankruptcy petition. The stay prohibits certain collection actions against the debtor, the debtor's property, and the property of the bankruptcy estate. Prior to enactment of section 7433(e), individuals injured by the IRS's willful violation of the automatic stay could only sue to recover actual damages, including costs and attorneys' fees, under Bankruptcy Code section 362(h). Section 7433(e) provides an alternative cause of action to recover damages, but still permits an individual to recover damages under section 362(h) of the Bankruptcy Code, in lieu of an action under section 7433(e). However, section 7433(e) explicitly provides that administrative and litigation costs incurred in pressing a claim under section 362(h) of the Bankruptcy Code may only be paid pursuant to, and subject to the conditions described in, section 7430 of the Code. Section 7430 authorizes the payment of administrative and litigation costs only if a taxpayer exhausts administrative remedies. The regulations provide that in order to qualify for an award of administrative and litigation costs in an action under section 362(h) of the Bankruptcy Code, a taxpayer must (as in the case of damages actions under section 7433(e)) file an administrative claim with the IRS relating to the violation of the automatic stay.

Section 524 sets forth the effect of a discharge under the Bankruptcy Code. A discharge operates as an injunction against the commencement or continuation of any action to collect a discharged debt as a personal liability of the debtor. Prior to enactment of section 7433(e), a debtor who believed the IRS had willfully violated the discharge injunction could request the Bankruptcy Court under Bankruptcy Code section 105 to hold the IRS in contempt and seek to recover damages under that Bankruptcy Code provision. Section 7433(e) now provides the exclusive remedy for the IRS's willful violation of the discharge injunction.

The regulations set forth procedures relating to these claim and damage allowance provisions. Damages recoverable under section 7433(e) for a violation of the automatic stay or the discharge injunction are limited to (1) the actual, direct economic damages sustained by the taxpayer (and the taxpayer has a duty to mitigate those damages), plus (2) costs of the action. The maximum damage award is $1,000,000. No petition for damages under section 7433(e) may be filed in a bankruptcy court unless the taxpayer first exhausts administrative remedies within the IRS.

Similar to rules previously adopted with respect to other wrongful collection actions, the regulations define direct, economic damages as actual, pecuniary damages sustained by the taxpayer as a result of the willful violation of section 362 or 524 of the Bankruptcy Code. Injuries such as inconvenience, loss of reputation, and emotional distress, are not compensable except to the extent they result in actual pecuniary loss.

The regulations define costs of the action that are recoverable as damages under section 7433(e) as: (1) Fees of the clerk and marshal; (2) fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copies of paper necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court appointed experts and interpreters. Costs of the action do not include any costs other than those enumerated in this paragraph.

Reasonable administrative and litigation costs, including attorneys fees, are not recoverable as direct economic damages. These costs are recoverable, if at all, under section 7430. The taxpayer generally will be entitled to reasonable administrative and litigation costs under section 7430 if the taxpayer (1) files an administrative claim with the IRS, (2) establishes that the IRS willfully violated either the automatic stay under Bankruptcy Code section 362 or the discharge injunction under section 524, (3) substantially prevails with respect to the amount of damages or the most significant issue in controversy, and (4) meets the requirements of sections 7430(c)(4)(A)(ii) regarding net worth.

A petition for damages under section 7433 may not be filed in a bankruptcy court unless the taxpayer first files an administrative claim for damages with the IRS. The claim must be made in writing to the Chief, Local Insolvency Unit, for the judicial district in which the taxpayer filed the underlying bankruptcy case giving rise to the alleged violation. The claim must include: (1) The claimant taxpayer's name, taxpayer identification number, current address, current home and work telephone numbers and any convenient times to be contacted; (2) the court and case number of the bankruptcy case in which the violation occurred; (3) a description, in reasonable detail, of the violation (with copies of any available substantiating documentation or correspondence with the IRS); (4) a description of the injuries incurred by the taxpayer filing the claim (with copies of any available substantiating documentation or evidence); (5) the dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (along with any available substantiating documentation or evidence); and (6) the signature of the taxpayer or any duly authorized representative.

The regulations provide that, after an administrative claim for damages has been filed, a petition for damages under section 7433 may not be filed in a bankruptcy court until the earlier of (1) the time a decision is rendered on the claim or (2) six months from the date the administrative claim is filed. Because a taxpayer must petition the bankruptcy court for damages within two years after the cause of action accrues, the regulations contain an exception for claims filed in the last six months before the two-year limitation period expires. In those circumstances, taxpayers may file petitions for damages at any time after they file their administrative claims and before the period of limitations expires. A cause of action accrues under this section when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

**Special Analyses**

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

**Drafting Information**

The principal author of these regulations is Kevin B. Connelly, Office of Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy & Summonses Division, CC:PA:CBS, IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

**Par. 2.** Section 301.7426–2 is added to read as follows:

### § 301.7426–2 Recovery of damages in certain cases.

(a) *In general.* In addition to remedies related to wrongful levy set forth in § 301.7426–1(b), if a district court of the United States finds in any action brought under section 7426 that any officer or employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence, disregarded any provision of this title, the United States shall be liable to the plaintiff for damages. The plaintiff has a duty to mitigate damages. The total amount of damages recoverable under this section is the lesser of $1,000,000 ($100,000 in the case of negligence), or the sum of—

(1) Actual, direct economic damages as defined in § 301.7433–1(b) sustained as a proximate result of the reckless, intentional, or negligent actions of the officer or employee, reduced by the amount of any damages awarded under § 301.7426–1(b); and

(2) Costs of the action as defined in § 301.7433–1(c).

(b) *Administrative remedies must be exhausted.* The court may not award a judgment for damages under paragraph (a) of this section unless the court determines that the plaintiff has filed an administrative claim pursuant to paragraph (d) of this section, and has satisfied the requirements of paragraph (c) of this section.

(c) *No request for damages in a district court of the United States prior to filing an administrative claim.* (1) Except as provided in paragraph (c)(2) of this section, no request for damages under paragraph (a) of this section shall be maintained in any district court of the United States before the earlier of the following dates—

(i) The date the decision is rendered on a claim filed in accordance with paragraph (d) of this section; or

(ii) The date that is six months after the date an administrative claim is filed in accordance with paragraph (d) of this section.

(2) If an administrative claim is filed in accordance with paragraph (d) of this section during the last six months of the period of limitations described in paragraph (f) of this section, the claimant may file an action in a district court of the United States any time after the administrative claim is filed and before the expiration of the period of limitations.

(d) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for the lesser of $1,000,000 ($100,000 in the case of negligence) or actual, direct economic damages as defined in § 301.7433–1(b) shall be sent in writing to the Area Director, Attn: Compliance Technical Support Manager of the area in which the taxpayer currently resides.

(2) *Form.* The administrative claim shall include—

(i) The name, taxpayer identification number, current address and current home and work telephone numbers (indicating any convenient times to be contacted) of the person making the claim;

(ii) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iii) A description of the damages incurred by the claimant filing the claim (include copies of any available substantiating documentation or evidence);

(iv) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and

(v) The signature of the claimant or duly authorized representative.

(3) *Duly authorized representative.* For purposes of this paragraph (d), a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the claimant before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed to the claimant.

(e) *No liability for damages for any sum in excess of the dollar amount sought in the administrative claim. See* § 301.7433–1(f).

(f) *Period of limitations*—(1) *Time for filing.* A civil action under paragraph (a) of this section must be brought in a district court of the United States within two years after the date the cause of action accrues.

(2) *Right of action accrues.* A cause of action under paragraph (a) of this section accrues when the plaintiff has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(g) *Recovery of costs under section 7430. See* § 301.7433–1(h).

(h) *Effective date.* This section is applicable March 25, 2003.

**Par. 3.** Section 301.7430–1 is amended by redesignating paragraphs (e), (f) and (g) as paragraphs (f), (g) and (h), respectively, revising the phrase ''paragraph (e)(1), (e)(2), (e)(3), or (e)(4) of this section'' to read ''paragraph (f)(1), (f)(2), (f)(3), or (f)(4) of this section'', and adding a new paragraph (e) to read as follows:

### § 301.7430–1 Exhaustion of administrative remedies.

* * * * *

(e) *Actions involving willful violations of the automatic stay under section 362 or the discharge provisions under section 524 of the Bankruptcy Code*—(1) *Section 7433 claims.* A party has not exhausted administrative remedies within the Internal Revenue Service with respect to asserted violations of the automatic stay under section 362 of the Bankruptcy Code or the discharge

provisions under section 524 of the Bankruptcy Code unless it files an administrative claim for damages or for relief from a violation of section 362 or 524 of the Bankruptcy Code with the Chief, Local Insolvency Unit, for the judicial district in which the bankruptcy petition that is the basis for the asserted automatic stay or discharge violation was filed pursuant to § 301.7433–2(e) and satisfies the other conditions set forth in § 301.7433–2(d) prior to filing a petition under section 7433.

(2) *Section 362(h) claims.* A party has not exhausted administrative remedies within the Internal Revenue Service with respect to asserted violations of the automatic stay under section 362 of the Bankruptcy Code unless it files an administrative claim for relief from a violation of section 362 of the Bankruptcy Code with the Chief, Local Insolvency Unit, for the judicial district in which the bankruptcy petition that is the basis for the asserted automatic stay violation was filed pursuant to § 301.7433–2(e) and satisfies the other conditions set forth in § 301.7433–2(d) prior to filing a petition under section 362(h) of the Bankruptcy Code.

* * * * *

**§ 301.7430–2 [Amended]**

**Par. 4.** In § 301.7430–2, paragraph (c)(2) is amended by:

1. Adding the language ‘‘, except that requests with respect to administrative proceedings defined by § 301.7430–8(c) should be made to the Chief, Local Insolvency Unit’’ at the end of the first sentence.

2. Removing the language ‘‘District Director for the district’’ and adding ‘‘Internal Revenue Service office’’ in its place in the second sentence.

**Par. 5.** Section 301.7430–3 is amended by:

1. Revising paragraph (a)(4),

2. Paragraph (b) is amended by adding the language ‘‘, except those collection actions described by section 7433(e)’’ at the end of the penultimate sentence.

The revision reads as follows:

**§ 301.7430–3 Administrative proceeding and administrative proceeding date.**

(a) * * *

(4) Proceedings in connection with collection actions (as defined in paragraph (b) of this section), including proceedings under section 7432 or 7433, except proceedings brought under section 7433(e) and § 301.7433–2 or proceedings otherwise described in § 301.7430–8(c). See § 301.7430–8.

* * * * *

**Par. 6.** Section 301.7430–6 is amended by adding a sentence at the end of the section to read as follows:

**§ 301.7430–6 Effective dates.**

* * * Sections 301.7430–1(e), 301.7430–2(c)(2), 7430–3(a)(4) and (b) are applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

**Par. 7.** Section 301.7430–8 is added to read as follows:

**§ 301.7430–8 Administrative costs incurred in damage actions for violations of section 362 or 524 of the Bankruptcy Code.**

(a) *In general.* The Internal Revenue Service may grant a taxpayer’s request for recovery of reasonable administrative costs incurred in connection with the administrative proceeding before the Internal Revenue Service relating to the willful violation of section 362 or 524 of the Bankruptcy Code only if the taxpayer is a prevailing party.

(b) *Prevailing party.* A taxpayer is a prevailing party for purposes of this section only if—

(1) The taxpayer satisfies the net worth and size limitations in paragraph (f) of § 301.7430–5;

(2) The taxpayer establishes that in connection with the collection of his or her federal tax an officer or employee of the Internal Revenue Service has willfully violated a provision of section 362 or 524 of the Bankruptcy Code; and

(3) The position of the Internal Revenue Service in the proceeding was not substantially justified.

(c) *Administrative proceeding.* For purposes of this section, an administrative proceeding is a proceeding related to an administrative claim presented to the Internal Revenue Service seeking relief from a violation of section 362 or 524 of the Bankruptcy Code by the Internal Revenue Service or recovery of damages from the Internal Revenue Service under § 301.7433–2(e).

(d) *Costs incurred after filing of bankruptcy petition.* Administrative costs may be recovered only if incurred on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(e) *Time for filing claim for administrative costs.* (1) For purposes of this section, the taxpayer must file a claim for administrative costs before the Internal Revenue Service not later than 90 days after the date the Internal Revenue Service mails to the taxpayer, or otherwise notifies the taxpayer of, the decision regarding the claim for relief from or damages relating to a violation of the collection stay or the discharge injunction.

(2) If the Internal Revenue Service denies the claim for administrative costs in whole or in part, the taxpayer must file a petition with the Bankruptcy Court for administrative costs no later than 90 days after the date on which the denial of the claim for administrative costs is mailed, or otherwise furnished, to the taxpayer. If the Internal Revenue Service does not respond on the merits to a request by the taxpayer for an award of reasonable administrative costs within six months after such request is filed, the Internal Revenue Service’s failure to respond may be considered by the taxpayer as a denial of an award of reasonable administrative costs.

(3) For purposes of paragraphs (e)(1) and (2) of this section, if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90-day period shall end on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term legal holiday means a legal holiday in the District of Columbia. If the request for costs is to be filed with the Internal Revenue Service at an office of the Internal Revenue Service located outside the District of Columbia, the term legal holiday also means a statewide legal holiday in the state where such office is located.

(f) *Effective date.* This section is applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

**Par. 8.** Section 301.7433–1 is amended as follows:

1. In paragraph (a) introductory text, in the first sentence, the language ‘‘, or by reason of negligence,’’ is added after the language ‘‘recklessly or intentionally’’. In addition, the language ‘‘$100,000’’ in the third sentence is removed and ‘‘$1,000,000 ($100,000 in the case of negligence)’’ is added in its place.

2. In paragraph (b)(1), in the first sentence, the language ‘‘, or negligent,’’ is added after the language ‘‘reckless or intentional’’.

3. In paragraph (e)(1), in the first sentence, the language ‘‘$100,000’’ is removed and ‘‘$1,000,000 ($100,000 in the case of negligence)’’ is added in its place. In addition, the language ‘‘district director (marked for the attention of the Chief, Special Procedures Function) of the district’’ is removed and ‘‘Area Director, Attn: Compliance Technical Support Manager of the area’’ is added in its place.

4. In paragraph (h), in the penultimate sentence, the language ‘‘7432(a)’’ is removed and ‘‘7433(a)’’ is added in its place.

5. Revising paragraph (i).

The revision reads as follows:

**§ 301.7433–1 Civil cause of action for certain unauthorized collection actions.**

* * * * *

(i) *Effective dates.* The portions of this section relating to reckless or intentional acts are applicable to actions taken by Internal Revenue Service officials after July 30, 1996. The portions of this section relating to negligent acts are applicable to actions taken by the Internal Revenue Service officials after July 22, 1998.

**Par. 9.** Section 301.7433–2 is added to read as follows:

**§ 301.7433–2 Civil cause of action for violation of section 362 or 524 of the Bankruptcy Code.**

(a) *In general.* (1) If, in connection with the collection of a federal tax with respect to a taxpayer, an officer or employee of the Internal Revenue Service willfully violates any provision of section 362 (relating to the automatic stay) or section 524 (relating to discharge) of title 11, United States Code, or any regulation promulgated under such provision, the taxpayer may file a petition for damages against the United States in Federal bankruptcy court. The taxpayer has a duty to mitigate damages. The total amount of damages recoverable under this section is the lesser of $1,000,000, or the sum of—

(i) Actual, direct economic damages sustained as a proximate result of the willful actions of the officer or employee; and

(ii) Costs of the action.

(2) An action under this section constitutes the exclusive remedy under the Internal Revenue Code for violations of sections 362 and 524 of the Bankruptcy Code. In addition, taxpayers injured by violations of section 362 of the Bankruptcy Code may maintain actions under section 362(h) of the Bankruptcy Code (relating to an individual injured by a willful violation of the stay). However, any administrative or litigation costs in connection with an action under section 362(h) may be awarded, if at all, only under section 7430 of the Internal Revenue Code.

(b) *Actual, direct economic damages*—(1) *Definition.* See § 301.7433–1(b)(1).

(2) *Litigation costs and administrative costs not recoverable as actual, direct economic damages.* Litigation costs and administrative costs are not recoverable as actual, direct economic damages. These costs may be recoverable under section 7430 (see paragraph (h) of this section), or, solely to the extent described in paragraph (c) of this section, as costs of the action.

(c) *Costs of the action.* Costs of the action recoverable as damages under this section are limited to the costs set forth in § 301.7433–1(c).

(d) *No civil action in federal bankruptcy court prior to filing an administrative claim*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, no action under paragraph (a)(1) of this section shall be maintained in any bankruptcy court before the earlier of the following dates—

(i) The date the decision is rendered on a claim filed in accordance with paragraph (e) of this section; or

(ii) The date that is six months after the date an administrative claim is filed in accordance with paragraph (e) of this section.

(2) *When administrative claim filed in last six months of period of limitations.* If an administrative claim is filed in accordance with paragraph (e) of this section during the last six months of the period of limitations described in paragraph (g) of this section, the taxpayer may petition the bankruptcy court any time after the administrative claim is filed and before the expiration of the period of limitations.

(e) *Procedures for an administrative claim*—(1) *Manner.* An administrative claim for the lesser of $1,000,000 or actual, direct economic damages as defined in paragraph (b) of this section shall be sent in writing to the Chief, Local Insolvency Unit, for the judicial district in which the taxpayer filed the underlying bankruptcy case giving rise to the alleged violation.

(2) *Form.* The administrative claim shall include—

(i) The name, taxpayer identification number, current address, and current home and work telephone numbers (with an identification of any convenient times to be contacted) of the taxpayer making the claim;

(ii) The location of the bankruptcy court in which the underlying bankruptcy case was filed and the case number of the case in which the violation occurred;

(iii) A description, in reasonable detail, of the violation (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);

(iv) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);

(v) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available documentation or evidence); and

(vi) The signature of the taxpayer or duly authorized representative.

(3) *Duly authorized representative defined.* For purposes of this paragraph (e), a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(f) *No action in bankruptcy court for any sum in excess of the dollar amount sought in the administrative claim.* No action for actual, direct economic damages under paragraph (a) of this section may be instituted in federal bankruptcy court for any sum in excess of the amount (already incurred and estimated) of the administrative claim filed under paragraph (e) of this section, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time the administrative claim was filed, or upon allegation and proof of intervening facts relating to the amount of the claim.

(g) *Period of limitations*—(1) *Time for filing.* A petition for damages under paragraph (a) of this section must be filed in bankruptcy court within two years after the date the cause of action accrues.

(2) *Right of action accrues.* A cause of action under paragraph (a) of this section accrues when the taxpayer has had a reasonable opportunity to discover all essential elements of a possible cause of action.

(h) *Recovery of litigation costs and administrative costs under section 7430*—(1) *In general.* Litigation costs, as defined in § 301.7433–1(b)(2)(i), including attorneys fees, not recoverable under this section may be recoverable under section 7430 if a taxpayer challenges in whole or in part an Internal Revenue Service denial of an administrative claim for damages by filing a petition in the bankruptcy court. If, following the Internal Revenue Service's denial of an administrative claim for damages, a taxpayer files a petition in the bankruptcy court challenging that denial in whole or in part, substantially prevails with respect to the amount of damages in controversy, and meets the requirements of section 7430(c)(4)(A)(ii) (relating to net worth and size requirements), the taxpayer will be considered a prevailing party for purposes of section 7430, unless the Internal Revenue Service establishes that the position of the

Internal Revenue Service in the proceeding was substantially justified. Such taxpayer will generally be entitled to attorneys' fees and other reasonable litigation costs not recoverable under this section. For purposes of this paragraph (h), if the Internal Revenue Service does not respond on the merits to an administrative claim for damages within six months after the claim is filed, the Internal Revenue Service's failure to respond will be considered a denial of the claim on the grounds that the Internal Revenue Service did not willfully violate Bankruptcy Code section 362 or 524.

(2) *Administrative costs*—(i) *In general.* Administrative costs, as defined in § 301.7433–1(b)(2)(ii), including attorneys' fees, not recoverable under this section may be recoverable under section 7430. *See* § 301.7430–8.

(ii) *Limitation regarding recoverable administrative costs.* Administrative costs may be awarded only if incurred on or after the date of filing of the bankruptcy petition that formed the basis for the stay on collection under Bankruptcy Code section 362 or the discharge injunction under Bankruptcy Code section 524, as the case might be.

(i) *Effective date.* This section is applicable to actions taken by the Internal Revenue Service officials after July 22, 1998.

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

Approved: March 5, 2003.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury.*

[FR Doc. 03–6597 Filed 3–24–03; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 916

**[KS–023–FOR]**

## Kansas Regulatory Program and Abandoned Mine Land Reclamation Plan

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Kansas regulatory program and abandoned mine land reclamation (AMLR) plan (Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kansas proposed to revise its regulatory program by updating its adoption by reference of applicable portions of 30 CFR part 700 to End from the July 1, 1995, version to the July 1, 2001, version. Kansas also revised its regulation concerning permit reviews. Finally, Kansas revised its AMLR plan by adding a new regulation concerning abandoned mine land (AML) agency procedures for reclamation projects receiving less than 50 percent government funding. Kansas revised its program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** March 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet address: *jcoleman@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Kansas Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

### I. Background on the Kansas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kansas regulatory program on January 21, 1981. You can find background information on the Kansas regulatory program and program amendments, including the Secretary's findings, the disposition of comments, and conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5892). You can also find later actions concerning the Kansas regulatory program and program amendments at 30 CFR 916.10, 916.12, 916.15, and 916.16.

The AMLR program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Kansas AMLR plan on February 1, 1982. You can find background information on the Kansas AMLR plan, including the Secretary's findings and the disposition of comments in the February 1, 1982, **Federal Register** (47 FR 4513). You can find later actions concerning the Kansas AMLR plan and amendments to the plan at 30 CFR 916.20 and 916.25.

### II. Submission of the Amendment

By electronic mail (e-mail) dated July 24, 2002 (Administrative Record No. KS–623), Kansas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kansas sent the amendment in response to an August 23, 2000, letter that we sent to Kansas in accordance with 30 CFR 732.17(c), concerning valid existing rights (Administrative Record No. KS–618). Kansas also included changes made at its own initiative. Kansas proposed to revise its regulatory program by updating its adoption by reference of applicable portions of 30 CFR part 700 to End from the July 1, 1995, version to the July 1, 2001, version. Kansas also revised its regulation concerning permit reviews. Kansas revised its AMLR plan by adding a new regulation concerning abandoned mine land (AML) agency procedures for reclamation projects receiving less than 50 percent government funding.

We announced receipt of the amendment in the September 23, 2002, **Federal Register** (67 FR 59484). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on October 23, 2002. We received comments from one Federal agency and one State agency.

During our review of the amendment, we identified concerns about editorial errors. We notified Kansas of these concerns by letter dated October 31, 2002, and by e-mail dated November 6,

2002 (Administrative Record Nos. KS–623.05 and KS–623.06, respectively).

During a telephone conference on January 15, 2003, Kansas notified us that it had made the editorial changes required by our letter dated October 31, 2002, and e-mail dated November 6, 2002 (Administrative Record No. KS–623.07).

After further review of the amendment, we realized that we had not announced receipt of Kansas' proposed regulation at K.A.R. 47–16–12 in the proposed rule published on September 23, 2002. This proposed regulation concerns AML agency procedures for reclamation projects receiving less than 50 percent government funding. Therefore, we reopened the comment period in the January 16, 2003, **Federal Register** (68 FR 2265). The public comment period ended on January 31, 2003. We did not receive any comments.

## III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15, 732.17, 884.14, and 884.15. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

*A. Adoptions by Reference of 30 CFR Part 700 to End*

1. Updated Adoptions by Reference

Kansas updated its adoptions by reference of applicable sections of 30 CFR part 700 to End from those in effect as of July 1, 1995, to those in effect as of July 1, 2001. Kansas also revised terms and cross-references to the Federal regulations, as necessary. The Kansas regulations that were updated, along with the applicable sections of the Federal regulations, are shown in the table below.

| Kansas administrative regulations (K.A.R.) | Topic | Federal regulations adopted by reference (30 CFR) |
|---|---|---|
| 47–2–75 | Definitions | 700.5, 701.5, and 705.5. |
| 47–3–2 | Application for mining permit | Part 777. |
| 47–3–42 | Application for mining permit | Parts 773, 778, 779, 780, 785, and 701.11(e). |
| 47–5–5a | Civil penalties | Parts 845 and 846. |
| 47–6–3 | Permit renewals | 774.15. |
| 47–6–4 | Permit transfers, assignments, and sales | 774.17. |
| 47–6–6 | Permit conditions | 773.17. |
| 47–6–8 | Termination of jurisdiction | 700.11. |
| 47–6–9 | Exemption for coal extraction incident to government-financed highway or other construction. | Part 707. |
| 47–6–10 | Exemption for coal extraction incidental to the extraction of other minerals. | Part 702. |
| 47–7–2 | Coal exploration | Part 772. |
| 47–8–9 | Bonding procedures | Part 800. |
| 47–9–1 | Permanent program performance standards | Parts 810, 815, 816, 817, 819, 823, 827, and 828. |
| 47–9–4 | Interim performance standards | Parts 710, 715, and 716.7. |
| 47–10–1 | Underground mining permit applications | Parts 783 and 784. |
| 47–11–8 | Small operator assistance program | Part 795. |
| 47–12–4 | Lands unsuitable for surface mining | Parts 761, 762, and 764. |
| 47–13–4 | Training and certification of blasters | Part 850. |
| 47–14–7 | Employee financial interest | Part 705. |
| 47–15–1a | Inspection and enforcement | Parts 840, 842, and 843. |

We find that Kansas' revised regulations are no less effective than the counterpart Federal regulations, and we are approving the adoptions by reference.

2. *New Adoptions by Reference.*

a. *Alternate Enforcement.*

At K.A.R. 47–5–17(a), Kansas adopted by reference 30 CFR 847.2(a), (b), and (d); 847.11; and 847.16, as in effect on July 1, 2001. At K.A.R. 47–5–17(b), Kansas replaced Federal terms and cross-references with State terms and cross-references, as needed.

We find that Kansas' new regulation at K.A.R. 47–5–17 is no less effective than the counterpart Federal regulations at 30 CFR 847.2, 847.11, and 847.16, concerning alternative enforcement. Therefore, we are approving this adoption by reference.

b. *Post-Permit Issuance Requirements.*

At K.A.R. 47–6–11(a), Kansas adopted by reference 30 CFR 774.11 and 774.12, as in effect on July 1, 2001. At K.A.R. 47–6–11(b), Kansas replaced Federal terms and cross-references with State terms and cross-references, as needed.

We find that Kansas' new regulation at K.A.R. 47–6–11 is no less effective than the counterpart Federal regulations at 30 CFR 774.11 and 774.12, concerning post-permit issuance requirements and post-permit issuance information requirements, respectively. Therefore, we are approving this adoption by reference.

*B. Substantive Revisions to Kansas' Regulations.*

1. K.A.R. 47–6–1 Permit review.

Kansas proposed to designate the existing paragraph as paragraph (a) and to add new paragraphs (b) through (f) to read as follows:

(b) Permits with variances granted in accordance with K.A.R. 47–3–42(a)(41), variances for delay in contemporaneous reclamation requirement in combined surface and underground mining activities, shall be reviewed no later than 3 years from the date of issuance.

(c) Permits containing experimental practices issued in accordance with K.A.R. 47–3–42(a)(39) shall be reviewed as set forth in the permit or at least every 2½ years from the date of issuance as required by the regulatory authority, in accordance with K.A.R. 47–3–42(a)(39), adopting by reference 30 CFR 785.13(g).

(d) After the review required by this section, or at any time, the Kansas department of health and environment may, by order, require reasonable revision of a permit in accordance with K.A.R. 47–6–2 to ensure compliance with the state act and the regulatory program.

(e) Any order of the Kansas department of health and environment requiring revision of a permit shall be based upon written findings and shall be subject to the provisions of administrative and judicial review in K.S.A. 49–407(d), 49–416a, 49–422a, and article 4 of

chapter 47 of the Kansas administrative regulations. Copies of the order shall be sent to the permittee.

(f) Permits may be suspended or revoked in accordance with articles 5 and 15 of chapter 47 of the Kansas administrative regulations.

We find that Kansas' new regulations at K.A.R. 47–6–1(b), (c), (d), (e), and (f) are substantively the same as the counterpart Federal regulations at 30 CFR 774.10(a)(2), (a)(3), (b), (c), and (d), respectively. Therefore, we are approving them.

2. K.A.R. 47–16–12 AML Agency Procedures for Reclamation Projects Receiving Less Than 50 Percent Government Funding

Kansas added K.A.R. 47–16–12 to its regulations to provide procedures for certain eligible abandoned mine land reclamation projects approved under Title IV of SMCRA. These projects must receive government funding that is less than 50 percent of the project cost, and any coal removal associated with the project must be incidental to it. As shown below, the procedures include specific consultations and concurrences with the Title V regulatory authority for each project, documentation of the consultations and concurrences, special requirements for each project, and a contractor limitation on coal extraction.

AML agency procedures for reclamation projects receiving less than 50 percent government funding. This section only applies if the level of funding for the construction will be less than 50 percent of the total cost because of planned coal extraction.

(a) Consultation with the active coal mining portion of the regulatory authority. In consultation with the active mining portion of the regulatory authority, the surface mining section must make the following determinations:

(1) They must determine the likelihood of the coal being mined under an active coal mining permit. This determination must take into account available information such as:

(i) Coal reserves from existing mine maps or other sources;

(ii) Existing environmental conditions;

(iii) All prior mining activity on or adjacent to the site;

(iv) Current and historic coal production in the area; and

(v) Any known or anticipated interest in mining the site.

(2) They must determine the likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

(3) They must determine the likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

(b) Concurrence with the active mining portion of the regulatory authority. If, after consulting with the active mining portion of the regulatory authority, it has been decided to proceed with the reclamation project, then the abandoned mine land and active mining portions of the regulatory authority must concur in the following determinations:

(1) They must concur in a determination of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under K.A.R. 47–6–9.

(2) They must concur in the delineation of the boundaries of the AML project.

(c) Documentation. The surface mining section must include in the AML case file:

(1) The determinations made under paragraphs (a) and (b) of this section;

(2) The information taken into account in making the determinations; and

(3) The names of the parties making the determinations.

(d) Special requirements. For each project, the surface mining section must:

(1) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, hydrologic balance, and other AML hazards associated with the project;

(2) Ensure that the reclamation project is conducted in accordance with the provisions of K.A.R 47–16–1 *et seq.;*

(3) Develop specific-site reclamation requirements, including performance bonds when appropriate in accordance with state procedures; and

(4) Require the contractor conducting the reclamation to provide, prior to the time reclamation begins, applicable documents that clearly authorize the extraction of coal and payment of royalties.

(e) Limitation. If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph (b)(1) of this section, the contractor must obtain a permit under 49–401 *et seq.* and K.A.R. 47–1–1 *et seq.* for such coal.

We find that K.A.R. 47–16–12 contains substantively the same requirements as the counterpart Federal regulation at 30 CFR 874.17. Therefore, we are approving it.

*C. Minor Revisions to Kansas' Regulations.*

1. K.A.R. 47–2–75 Definitions; Adoption by Reference.

K.A.R. 47–2–75(a) adopts by reference the definitions at 30 CFR 700.5, with exceptions. The exceptions include entire definitions, portions of definitions, and the meaning of terms in specific cases. At paragraph (a)(4), Kansas revised its previously approved exception for the definition of ''anthracite'' by adding the address of the Federal Register Library in Washington, DC.

We find that Kansas' addition of the address is consistent with the Federal definition language, and we are approving it.

2. K.A.R. 47–4–14a(c) Administrative Hearing Procedure—Rules of Procedure.

In paragraph (c)(2), Kansas proposed to update the address of the administrative appeals section of the Kansas Department of Health and Environment.

We find that this revision will not make Kansas' regulations at K.A.R. 47–4–14a(c) less effective than the Federal regulations at 43 CFR 4.1104 through 4.1116, concerning general rules relating to procedure and practice.

3. Updated State Citation References and Cross-references to Federal Citations.

Kansas updated State citation references and cross-references to the Federal citations in the following sections of its regulations: K.A.R. 47–6–2, permit revision; K.A.R. 47–16–9, contractor responsibility; and K.A.R. 47–16–10, exclusion of certain noncoal reclamation sites.

Because these changes are minor, we find that they will not make Kansas' regulations less effective than the corresponding Federal regulations.

## IV. Summary and Disposition of Comments

*Public Comments*

We asked for public comments on the amendment, but did not receive any.

*Federal Agency Comments*

On August 5, 2002, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Kansas program (Administrative Record No. KS–623.1). The U.S. Fish and Wildlife Service responded on August 15, 2002, that it had reviewed the amendment and had no comments to offer (Administrative Record No. KS–623.02).

*Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the changes that Kansas proposed to make in this amendment revised air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On August 5, 2002, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA

(Administrative Record No. KS–623.01). EPA did not respond to our request.

*State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 5, 2002, we requested comments on Kansas' amendment (Administrative Record No. KS–623.01). The SHPO responded on August 28, 2002, that it did not foresee any negative effects from the proposed amendment (Administrative Record No. KS–623.03).

## V. OSM's Decision

Based on the above findings, we approve the amendment Kansas sent us on July 24, 2002, and as revised on January 15, 2003.

We approve the regulations proposed by Kansas with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 916, which codify decisions concerning the Kansas program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Section 405(d) of SMCRA requires that the State have a program that is in compliance with the procedures, guidelines, and requirements established under the Act. Making this final rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

*Executive Order 12630—Takings*

In this rule, the State is proposing valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E of the preamble to that rule. *See* 64 FR 70766, 70822–27, December 17, 1999. The provisions in the rule based on other counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met. These standards are also not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and plan amendments because each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or Tribe are based solely on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR part 884 of the Federal regulations.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA. Section 405(d) of SMCRA requires State abandoned mine reclamation programs to be in compliance with the procedures, guidelines, and requirements established under SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. This determination is based on the fact that the Kansas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Kansas program has no effect on Federally recognized Indian tribes.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C). Also agency decisions on proposed State and Tribal abandoned mine land reclamation plans and plan amendments are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that

require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 916**

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 7, 2003.

**Charles E. Sandberg,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR part 916 is amended as set forth below:

## PART 916—KANSAS

1. The authority citation for part 916 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 916.12 is amended by revising the section heading to read as follows:

**§ 916.12 State regulatory program and proposed program amendment provisions not approved.**

3. Section 916.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

**§ 916.15 Approval of Kansas regulatory program amendments.**

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * | * | * |
| July 24, 2002 | March 25, 2003 | K.A.R. 47–2–75; 47–3–2, 42; 47–4–14a(c)(2);47–5–5a, 17; 47–6–1, 2(d)(2), 3, 4, 6, 8, 9, 10, 11; 47–7–2; 47–8–9; 47–9–1, 4; 47–10–1; 47–11–8; 47–12–4; 47–13–4; 47–14–7; 47–15–1a. |

4. Section 916.25 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

**§ 916.25 Approval of Kansas abandoned mine land reclamation plan amendments.**

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * | * | * |
| July 24, 2002 | March 25, 2003 | K.A.R. 47–16–9(a), 47–16–10(b), and 47–16–12. |

[FR Doc. 03–7024 Filed 3–24–03; 8:45 am]

**BILLING CODE 4310–05–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[COTP Western Alaska 02–001]**

**RIN 1625–AA00 (Formerly 2115–AA97)**

## Security Zone; Liquefied Natural Gas Tankers, Cook Inlet, AK

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard adopts, as final, the interim rule published in July 2002 that established security zones for Liquefied Natural Gas (LNG) tankers in Cook Inlet, AK, within the Western Alaska Marine Inspection Zone and Captain of the Port Zone. This final rule includes an effective information collection requirement calling for vessel and crew information from the owners or operators of commercial fishing vessels desiring to fish within the security zone.

**DATES:** On September 4, 2002, OMB approved the collection of information

required by 33 CFR 165.1709(b)(1)(ii) as published on July 1, 2002. This final rule is effective April 24, 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 docket (COTP Western Alaska 02–001) and are available for inspection or copying at Coast Guard Marine Safety Office Anchorage, AK between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Mark McManus, USCG Marine Safety Detachment Kenai, at (907) 283–3292 or Lieutenant Commander Chris Woodley, USCG Marine Safety Office Anchorage, at (907) 271–6700.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

On July 1, 2002 we published an interim rule with requests for comments entitled ''Security Zone, Liquefied Natural Gas Tankers, Cook Inlet, AK'' in the **Federal Register** (67 FR 44057). We received no comments. No public hearing was requested, and none was held.

## Background and Purpose

In its July 2002 interim rule, the Coast Guard established 1000-yard security zones around LNG tankers to safeguard the tankers, Nikiski marine terminals, the community of Nikiski, and the maritime community from sabotage or subversive acts and incidents of a similar nature. Paragraph 33 CFR 165.1709(b)(1)(ii) of that interim rule was not made effective because the Office of Management and Budget had not yet approved the collection of information called for by that paragraph. On September 4, 2002, OMB approved the collection of information. We are therefore adopting the interim rule as final and making paragraph 33 CFR 165.1709(b)(1)(ii) effective.

You can find more detailed background information in the preamble of the interim rule (67 FR 44057) under **SUPPLEMENTARY INFORMATION.**

## Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12886, 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 Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through the waters of Cook Inlet and dock at other Nikiski marine terminals.

## Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the vicinity of the Phillips Petroleum LNG Pier during the time this zone is activated; and the owners or operators of fishing vessels operating their nets in the vicinity of the Phillips Petroleum LNG Pier during the months of July through August.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons. Marine traffic will still be able to transit through Cook Inlet during the zones' activation. Additionally, vessels with cargo to load or unload from other Nikiski marine terminals in the vicinity of the zone will not be precluded from mooring at or getting underway from the terminals. The owners of fishing vessels that typically fish in the vicinity of the LNG pier during the summer months will not be prohibited from operating if they notify and provide information to the Coast Guard Marine Safety Detachment in Kenai before fishing in the security zone. The Coast Guard will collect information from them that is essential to keeping the pier secure from sabotage or subversive activities.

## Collection of Information

The Captain of the Port, Western Alaska requires information on fishing vessel owners and operators, and their vessels and crew, desiring to fish in the security zone around the Phillips Petroleum LNG Pier. This information is required to ensure port and vessel safety and security, to ensure uninterrupted fishing industry openings, to control vessel traffic, develop contingency plans, and enforce regulations. This collection of information is controlled by the Office of Management and Budget (OMB) under OMB control no. 1625–0043 (Formerly 2115–0540).

Recently, security zones were established for LNG tankers in Cook Inlet, AK through an interim rule published in the **Federal Register** on July 1, 2002 (67 FR 44057). A copy is available in the docket [COTP Western Alaska 02–001] under **ADDRESSES** or electronically through a Web site at *http://www.archives.gov/federal_register/.*

It became effective on July 6, 2002, with the exception of one paragraph, 33 CFR 165.1709(b)(1)(ii), which contains collection of information requirements. This rule modified an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

As required by 44 U.S.C. 3507(d), we submitted a copy of the interim rule (which we have adopted as the final rule without change) to the Office of Management and Budget (OMB) for its review of the collection of information. On September 4, 2002, after reviewing the rule and the overall collection of information burden under OMB Control Number 1625–0043 (Formerly 2115–0540), OMB approved the collection of information required under this rule. The section number is 33 CFR 165.1709, and the corresponding approval number from OMB is OMB Control Number 1625–0043, which expires on September 30, 2005.

## Federalism

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

## Unfunded Mandates Reform Act

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

effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Consultation and Coordination With Indian Tribal Governments**

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

**Energy Effects**

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

**Environment**

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

**List of Subjects in 33 CFR Part 165**

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

Accordingly, the interim rule amending 33 CFR part 165 that was published at 67 FR 44059 on July 1, 2002, is adopted as a final rule without change.

Dated: February 26, 2003.

**H. Mark Hamilton,**

*Commander, Coast Guard, Acting Captain of the Port, Western Alaska.*

[FR Doc. 03–6981 Filed 3–24–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[COTP Tampa 03–006]**

**RIN 1625–AA00**

## Security Zones; Tampa Bay, Port of Tampa, Port of Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, Big Bend, Weedon Island, and Crystal River, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing security zones in Tampa Bay, Port of Tampa, Port of Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, Big Bend, Weedon Island, and Crystal River, Florida. These zones are needed to ensure public safety and security in the greater Tampa Bay area. Entry into these zones would be prohibited unless authorized by the Captain of the Port, or their designated representative.

**DATES:** This rule is effective from March 7, 2003 through June 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 docket [COTP Tampa 03–006] and are available for inspection or copying at Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LCDR David McClellan, Coast Guard Marine Safety Office Tampa, at (813) 228–2189 extension 102.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM and delaying the effective date of this rule would be contrary to the public interest since immediate action is needed to continue to protect the public, ports and waterways of the United States. The Coast Guard will issue a broadcast notice to mariners and place Coast Guard vessels in the vicinity of these zones 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**. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction. The Coast Guard will publish a NPRM proposing a permanent rule for security zones in these same locations and requesting public comment.

**Background and Purpose**

The terrorist attacks of September 11, 2001, killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States, particularly those vessels and facilities which are frequented by foreign nationals and are of interest to national security. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. The Captain of the Port of Tampa has determined that these security zones are necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

These security zones are similar to the existing temporary security zones established for vessels, waterfront facilities and bridges that will soon expire. The following seven existing temporary final rules were published in the **Federal Register**:

*Security Zone for Crystal River, FL* (66 FR 62940, December 4, 2001). This temporary rule created a fixed security zone around the Florida Power Crystal

River nuclear power plant located at the end of the Florida Power Corporation Channel and the Demory Gap Channel, Crystal River, Florida.

*Security Zone for Sunshine Skyway Bridge, Tampa, FL* (66 FR 65838, December 21, 2001). This temporary rule created temporary fixed security zones 100 feet around all bridge supports and rocky outcroppings at the base of the supports for the Sunshine Skyway Bridge in Tampa Bay.

*Security Zone Tampa, FL* (67 FR 8196, February 22, 2002). This temporary rule created security zones 100 yards around moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade ''A'' and ''B'' flammable liquid cargo.

*Security Zone Cruise Ships Tampa, FL* (67 FR 10618, March 8, 2002). This temporary rule created security zones 100 yards around cruise ships moored in the Port of Tampa.

*Security Zone St. Petersburg Harbor, FL* (67 FR 36098, May 23, 2002). This temporary rule established fixed security zones 100 feet around seawalls, moorings, and vessels at Coast Guard and waterfront facilities and moorings in St. Petersburg Harbor, FL.

*Security Zone, Port of Tampa, Tampa, FL* (67 FR 40861; June 14, 2002). This temporary zone created a security zone 50 yards from the shore or seawall and encompassing all piers around facilities in the following locations: Port Sutton, East Bay, Hooker's Point, Sparkman Channel, Ybor Channel and portions of Garrison Channel. Also, Port Sutton Channel is closed.

*Security Zones Tampa Bay and Crystal River, FL* (67 FR 42483, June 24, 2002). This temporary rule established 10 security zones in Tampa Bay, Tampa, Florida, and Crystal River, Florida until October 31, 2002.

On October 30, 2002, the Captain of the Port issued a temporary final rule [COTP TAMPA–02–131] continuing security zones in these areas until 11:59 p.m. February 28, 2003. And on January 10, 2003, the COTP published a notice of proposed rulemaking for permanent security zones in these and other areas (68 FR 7093). The comment period on that proposed rule is open until April 14, 2003.

**Discussion of Rule**

This temporary rule establishes security zones in areas covered by past temporary rules to ensure consistent security of facilities, vessels, and infrastructure throughout the Tampa Captain of the Port Zone. There are changes, however, from previous security zones:

The coordinates of the security zone for Crystal River, FL have been changed because the original coordinates did not accurately match the intended security zone.

The scope of the security zone around the Sunshine Skyway Bridge, Tampa, FL, has been reduced to allow for fishing in portions of the zone. The zone extends from pier 88 to 135 and out 100 feet from bridge supports or rocky outcroppings at the base of the bridge.

The security zones for moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade ''A'' and ''B'' flammable liquid cargo requires any vessel transiting within 200 yards of moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade ''A'' and ''B'' cargo must proceed through the area at the minimum speed necessary to maintain safe navigation. These security zones exclude entry within 100 yards of tank vessels carrying the specified cargoes moored in Port Tampa.

The security zones around moored cruise ships in Tampa, FL have been expanded to include moored cruise ships in Port Manatee and Port Saint Petersburg. Additionally, the Coast Guard intends to change this security zone by adding that any vessel transiting within 200 yards of a moored cruise ship must proceed through the area at the minimum speed necessary to maintain safe navigation. These security zones exclude entry within 100 yards of moored cruise ships in Port Tampa, located in Ybor Channel, Ybor Turning Basin, and East Bay, ships in Port Manatee, or Saint Petersburg Harbor (Bayboro Harbor).

The security zone in St. Petersburg Harbor, FL has been extended from 100 feet from seawalls, moorings, and moored vessels to 50 yards to be the same as other security zones in the bay protecting similar infrastructure. The security zone has also been expanded on its northern boundary to the west to include Port of Saint Petersburg Cruise Ship Terminal. The coordinates of the security zone for St. Petersburg Harbor, FL have also been corrected because the original coordinates did not accurately match the intended security zone. This zone covers north and south Coast Guard moorings and facilities and Saint Peterburg Cruise Ship Terminals.

The 50 yard zones around piers and facilities in Port Tampa, Port Sutton, East Bay, Hooker's Point, Hillsborough Bay Cut ''C'', Sparkman Channel, Ybor Turning Basin, and Ybor Channel have been extended to include northern reaches of Ybor Channel and Cruise Terminals 3 and 6. The coordinates of the security zone have also been changed because the original coordinates did not accurately match the intended security zone.

The security zone around moving cruise ships, Tampa, FL, has been expanded to 200 yards, allowing vessels to transit the outer 100 yards of the zone but requiring transiting vessels to proceed at minimum speed to maintain safe navigation. This change matches safety zone requirements for moored cruise ships. These zones will be in place from the ''T'' Sea Buoy to berth on an inbound transit and from berth to the ''T'' Sea Buoy on outbound transits.

A new security zone has been created restricting entrance to the immediate area surrounding the LPG facility and the pier at Rattlesnake, Tampa, FL. The security zone commences at position 27°53.32′ N, 082°32.05′ W and extends north to 27°53.36′ N, 082°32.05′ W encompassing all waters east and south of this line in Rattlesnake, Tampa, Florida.

A new security zone has been created restricting entrance to the channel servicing the petroleum facilities and piers at Old Port Tampa, FL. The security zone is bounded by the following points: 27°51.62′ N, 082°33.14′ W east to 27°51.71′ N, 082°32.5′ W north to 27°51.76′ N, 082°32.5′ W west to 27°51.73′ N, 082°33.16′ W and south to 27°51.62′ N, 082°33.14′ W closing off the Old Port Tampa channel.

A new security zone has been created restricting access to the Big Bend Power Facility. The security zone extends 50 yards from the shore or seawall and from all piers around facilities. The security zone is bounded by the following points: 27°47.85′ N, 082°25.02′ W then east and south along the shore and pile to 27°47.63′ N, 082°24.70′ W then north along the shore to 27°48.17′ N, 082°24.70′ W then north and west along a straight line to 27°48.12′ N, 082°24.88′ W, then south along the shore and pile to 27°47.85′ N, 082°25.02′ W closing off the entrance to the Big Bend Power Facility.

A new security zone has been created restricting access to the Power Facility at Weedon Island. The security zone extends 50 yards from the shore or seawall and from all piers around facilities. The security zone is bounded by the following points: 27°51.52′ N, 082°35.82′ W then north and east along the shore to 27°51.54′ N, 082°35.78′ W then north to 27°51.68′ N, 082°35.78′ W then north to 27°51.75′ N, 082°35.78′ W closing off entrance to the canal then north to 27°51.89′ N, 082°35.82′ W then east along the shore to 27°51.89′ N,

082°36.10′ W then east to 27°51.89′ N, 082°36.14′ W closing off entrance to the canal.

**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 Homeland Security.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary because there is ample room for vessels to navigate around the security zones and the Captain of the Port may allow vessels to enter the zones, on a case-by-case basis with the express permission of the Captain of the Port of Tampa or their designated representative.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities because the majority of the zones are limited in size and leave ample room for vessels to navigate around the zones. The zones will not significantly impact commuter and passenger vessel traffic patterns, and vessels may be allowed to enter the zones, on a case-by-case basis, with the express permission of the Captain of the Port of Tampa or their designated representative.

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

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would effect your small business, organization, or governmental 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 Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

**Energy Effects**

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

**Environment**

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 is revised 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; Department of Homeland Security Delegation No. 0170.

2. Add § 165.T07–006 to read as follows:

### § 165.T07–006 Security Zones; Tampa Bay, Port of Tampa, Port of Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, Big Bend, Weedon Island, and Crystal River, Florida.

(a) *Location.* The following areas, denoted by coordinates fixed using the North American Datum of 1983 (World Geodetic System 1984), are security zones:

(1) *Rattlesnake, Tampa, FL.* All waters, from surface to bottom, in Old Tampa Bay east and south of a line commencing at position 27°53.32′ N, 08°32.05′ W north to 27°53.36′ N, 082°32.05′ W.

(2) *Old Port Tampa, Tampa, FL.* All waters, from surface to bottom, in Old Tampa Bay encompassed by a line connecting the following points: 27°51.62′ N, 082°33.14′ W east to 27°51.71′ N, 082°32.5′ W north to 27°51.76′ N, 082°32.5′ W west to 27°51.73′ N, 082°33.16′ W and south to 27°51.62′ N, 082°33.14′ W, closing off the Old Port Tampa channel.

(3) *Sunshine Skyway Bridge, Tampa, FL.* All waters in Tampa Bay, from surface to bottom, 100-foot around all bridge supports, dolphins and rocky outcroppings bounded on the northern side of the bridge at pier 135, (24 N), 27°37.85′ N, 082°39.78′ W, running south under the bridge to pier 88, (24 S) 27°36.59′ N, 082°38.86′ W. Visual identification of the zone can be defined as to the areas to the north and south where the bridge structure begins a distinct vertical rise.

(4) *Vessels Carrying Hazardous Cargo, Tampa, FL.* All waters, from surface to bottom, 200 yards around vessels moored in Tampa Bay carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade ''A'' and ''B'' flammable liquid cargo. Any vessel transiting within the outer 100 yards of the zone for moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade ''A'' and ''B'' cargo may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100-yard portion of the security zone closest to the vessel.

(5) *Piers, Seawalls, and Facilities, Port of Tampa, Port Sutton and East Bay.* All waters, from surface to bottom, extending 50 yards from the shore, seawall and piers around facilities in Port Sutton and East Bay within the Port of Tampa encompassed by a line connecting the following points: 27°54.15′ N, 082°26.11′ W, east northeast to 27°54.19′ N, 082°26.00′ W, then northeast to 27°54.37′ N, 082°25.72′ W, then northerly to 27°54.48′ N, 082°25.70′ W, then northeast and closing off waters east of a line between 27°54.52′ N, 082°25.57′ W, and 27°54.57′ N, 082°25.53′ W then northeasterly and terminating at point 27°55.27‘ N, 082°25.17′ W, closing off all of Port Sutton Channel.

(6) *Piers, Seawalls, and Facilities, Port of Tampa, East Bay and the eastern side of Hooker's Point.* All waters, from surface to bottom, extending 50 yards from the shore, seawall and piers around facilities on East Bay and on the East Bay Channel within the Port of Tampa encompassed by a line connecting the following points: 27°56.05′ N, 082°25.95′ W, southwesterly to 27°56.00′ N, 082°26.07′ W, then southerly to 27°55.83′ N, 082°26.07′ W, then southeasterly to 27°55.55′ N, 082°25.75′ W, then south to 27°54.75′ N, 082°25.75′ W, then southwesterly and terminating at point 27°54.57′ N, 082°25.86′ W.

(7) *Piers, Seawalls, and Facilities, Port of Tampa, on the western side of Hooker's Point.* All waters, from surface to bottom, extending 50 yards from the shore, seawall and piers around facilities on Hillsborough Bay Cut ''D'' Channel, Sparkman Channel, Ybor Turning Basin, and Ybor Channel within the Port of Tampa encompassed by a line connecting the following points: 27°54.74′ N, 082°26.47′ W, northwest to 27°55.25′ N, 082°26.73′ W, then north-northwest to 27°55.60′ N, 082°26.80′ W, then north-northeast to 27°56.00′ N, 082°26.75′ W, then northeast 27°56.58′ N, 082°26.53′ W, and north to 27°57.29′ N, 082°26.51′ W, west to 27°57.29′ N, 082°26.61′ W, then southerly to 27°56.65′ N, 082°26.63′ W, southwesterly to 27°56.58′ N, 082°26.69′ W, then southwesterly and terminating at 27°56.53′ N, 082°26.90′ W.

(8) *Piers, Seawalls, and Facilities, Port of Manatee.* All waters, from surface to bottom, within the Port of Manatee extending 50 yards from the shore, seawall and piers around facilities. This security zone encompasses all piers and seawalls of the cruise terminal berths 9 and 10 in Port Manatee, Florida beginning at 27°38.00′ N, 082°33.81′ W continuing east to 27°38.00′ N, 082°33.53′ W.

(9) *Moving Cruise Ships in the Port of Tampa, Port of Saint Petersburg, and Port Manatee, Florida.* All waters, from surface to bottom, extending 200 yards around all cruise ships entering or departing Port of Tampa, Port of Saint Petersburg, or Port Manatee, Florida. These temporary security zones are activated on the inbound transit when a cruise ship passes the Tampa Lighted Whistle Buoy ''T'', located at 27°35.35′ N, 083°00.71′ W and terminate when the vessel is moored at a cruise ship terminal. The security zones are activated on the outbound transit when a cruise ship gets underway from a terminal and terminates when the cruise ship passes the Tampa Lighted Whistle Buoy ''T'', located at 27°35.35′ N, 083°00.71′ W. Any vessel transiting within the outer 100 yards of the zone for a cruise ship may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100-yard portion of the security zone closest to the vessel.

(10) *Moored Cruise Ships in the Port of Tampa, Port of Saint Petersburg, and Port Manatee, Florida.* All waters, from surface to bottom, extending 200 yards around moored cruise ships in the Ports of Tampa, Saint Petersburg, or Port Manatee, Florida. Any vessel transiting within the outer 100 yards of the zone of moored cruise ships may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100-yard portion of the security zone closest to the vessel.

(11) *Saint Petersburg Harbor, FL.* All waters, from surface to bottom, extending 50 yards from the seawall and around all moorings and vessels in Saint Petersburg Harbor (Bayboro Harbor), commencing on the north side of the channel at dayboard ''10'' in approximate position 27°45.56′ N, 082°37.55′ W, and westward along the seawall to the end of the cruise terminal in approximate position 27°45.72′ N, 082°37.97′ W. The zone will also include the Coast Guard south moorings in Saint Petersburg Harbor. The zone will extend 50 yards around the piers commencing from approximate position 27°45.51′ N, 082°37.99′ W to 27°45.52′ N, 082°37.57′ W. The southern boundary of the zone is shoreward of a

line between the entrance to Salt Creek easterly to Green Daybeacon 11 (LLN 2500).

(12) *Crystal River Nuclear Power Plant.* All waters, from surface to bottom, around the Florida Power Crystal River nuclear power plant located at the end of the Florida Power Corporation Channel, Crystal River, Florida, encompassed by a line connecting the following points: 28°56.87′ N, 082°45.17′ W (Northwest corner), 28°57.37′ N, 082°41.92′ W (Northeast corner), 28°56.81′ N, 082°45.17′ W (Southwest corner), and 28°57.32′ N, 082°41.92′ W (Southeast corner).

(13) *Crystal River Demory Gap Channel.* All waters, from surface to bottom, in the Demory Gap Channel in Crystal River, Florida, encompassed by a line connecting the following points: 28°57.61′ N, 082°43.42′ W (Northwest corner), 28°57.53′ N, 082°41.88′ W (Northeast corner), 28°57.60′ N, 082°43.42′ W (Southwest corner), 28°57.51′ N, 082°41.88′ W (Southeast corner).

(14) *Big Bend, Tampa Bay, Florida.* All waters of Tampa Bay, from surface to bottom, extending 50 yards from the shore, seawalls and piers around the Big Bend Power Facility, encompassed by a line connecting the following points: 27°47.85′ N, 082°25.02′ W then east and south along the shore and pile to 27°47.63′ N, 082°24.70′ W then north along the shore to 27°48.17′ N, 082°24.70′ W then north and west along a straight line to 27°48.12′ N, 082°24.88′ W then south along the shore and pile to 27°47.85′ N, 082°25.02′ W, closing off entrance to the Big Bend Power Facility.

(15) *Weedon Island, Tampa Bay, Florida.* All waters of Tampa Bay, from surface to bottom, extending 50 yards from the shore, seawall and piers around the Power Facility at Weedon Island encompassed by a line connecting the following points: 27°51.52′ N, 082°35.82′ W then north and east along the shore to 27°51.54′ N, 082°35.78′ W then north to 27°51.68′ N, 082°35.78′ W then north to 27°51.75′ N, 082°35.78′ W closing off entrance to the canal then north to 27°51.89′ N, 082°35.82′ W then east along the shore to 27°51.89′ N, 082°36.10′ W then east to 27°51.89′ N, 082°36.14′ W closing off entrance to the canal.

(b) *Regulations.* (1) Entry into or remaining within these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Tampa, Florida or their designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 813–228–2189/91 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or their designated representative.

(c) *Definition.* As used in this section, ''cruise ship'' means a vessel required to comply with Title 33 Code of Federal Regulations Part 120.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: March 7, 2003.

**James M. Farley,**

*Captain, Coast Guard, Captain of The Port, Tampa, Florida.*

[FR Doc. 03–6982 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF COMMERCE

## United States Patent and Trademark Office

## 37 CFR Parts 1, 2, 3, 4, 5, 102, 104, and 150

**[Docket No.: 2003–P–011]**

## Correspondence With the United States Patent and Trademark Office

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule; Nomenclature change.

**SUMMARY:** The United States Patent and Trademark Office (Office) is revising the rules of practice to change the address for certain correspondence with the Office. The Office is preparing to move to Alexandria, Virginia. The Office is changing certain correspondence addresses so that all correspondence with the Office will now be routed through a United States Postal Service (USPS) facility that is more conveniently located to the Office. In addition, the Office is also changing the titles of Office officials as set forth in the rules of practice for consistency with the titles provided in the American Inventors Protection Act of 1999.

**EFFECTIVE DATE:** The changes in this final rule are effective May 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Darnell M. Jayne, Legal Advisor, Office of Patent Legal Administration, by telephone at (703) 308–6906, or by facsimile at (703) 746–3580.

**SUPPLEMENTARY INFORMATION:** The Office changed the address for trademark-related correspondence in December of 1996. *See Communications with the Patent and Trademark Office,* 61 FR 56439 (Nov. 1, 1996), 1192 *Off. Gaz. Pat. Office* 95 (Nov. 26, 1996) (final rule). With this change, trademark-related correspondence with the Office was routed through a USPS facility in Virginia, and most other correspondence with the Office was routed through a USPS facility in the District of Columbia. The Office is currently in the process of moving its principal office from Arlington, Virginia to Alexandria, Virginia. Since a USPS facility in Virginia is more conveniently located to the site of the Office's future principal office in Alexandria, Virginia, the Office is changing its correspondence addresses (other than for trademark-related correspondence) so that all correspondence with the Office will now be routed through a USPS facility in Virginia. In addition, selection of a USPS facility in Virginia as the new correspondence address is appropriate because the Office maintains and will continue to maintain its principal office in Northern Virginia.

*General Mailing Addresses:* The Office's three separate general mailing addresses are now as follows: (1) For correspondence processed by the organizations reporting to the Commissioner for Patents: Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313–1450; (2) For correspondence processed by the organizations reporting to the Commissioner for Trademarks or the Trademark Trial and Appeal Board: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513; and (3) For other correspondence (including patent and trademark documents sent to the Assignment Division for recordation and requests for certified or uncertified copies of patent or trademark documents): Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

The above addresses are the Office's three general mailing addresses. The Office has separate mailing addresses for certain correspondence: *e.g.*, (1) Certain court-related correspondence (*e.g.*, a summons and complaint) being delivered to the Office via the USPS must be addressed: General Counsel, United States Patent and Trademark Office, PO Box 15667, Arlington, Virginia 22215 (§ 104.2); (2) correspondence directed to the counsel for the Office of Enrollment and Discipline (OED) Director relating to disciplinary proceedings pending before an Administrative Law Judge or the Director must be addressed: Office of the Solicitor, PO Box 16116, Arlington, Virginia 22215; (3) payments of maintenance fees in patents being

delivered to the Office via the USPS should be addressed: United States Patent and Trademark Office, PO Box 371611, Pittsburgh, Pennsylvania 15250–1611; and (4) a deposit account replenishment being delivered to the Office via the USPS should be addressed: Director of the United States Patent and Trademark Office, PO Box 70541, Chicago, Illinois 60673. Persons filing correspondence with the Office should check the rules of practice, the *Official Gazette,* or the Office's Internet Web site (*http://www.uspto.gov*) to determine the appropriate mailing address for such correspondence.

The Office appreciates that it will take some period of time before all persons filing correspondence with the Office become accustomed to these address changes. The Office plans to arrange for continued delivery of correspondence addressed to the Office's former Washington, DC 20231 address as a courtesy for a limited period of time. The Office, however, has been experiencing delays and other problems with correspondence routed through the USPS facility at Brentwood. *See Processing of, and Requirements for, the Filing of Duplicate Applications and Papers in Patent Applications in view of USPS Mail Delays,* 1254 *Off. Gaz. Pat. Office* 92 (Jan. 15, 2002). Any correspondence addressed to the Office's former Washington, DC 20231 address that is delivered to the Office will still be subject to the delays and other problems associated with correspondence that is routed through the USPS facility at Brentwood.

In November of 2001, the Office also established a Post Office Box in Arlington, Virginia (PO Box 2327, Arlington, Virginia 22202) for use on an emergency basis, and indicated that it would continue to accept patent-related correspondence at this Arlington, Virginia Post Office Box and treat such correspondence as if it were addressed as set forth in 37 CFR 1.1 for purposes of 37 CFR 1.8 and 1.10 until further notice. *See Termination of the Suspension of the ''Express Mail'' Service of United States Postal Service for mail addressed to ZIP Codes 202xx through 205xx,* 1254 *Off. Gaz. Pat. Office* 33 (Jan. 1, 2002). The Office is hereby providing notice that persons submitting correspondence to the Office should no longer use this Arlington, Virginia Post Office Box for any correspondence (including sequence listings in electronic format) after May 1, 2003.

In addition, the Office is changing the various special Box designations to corresponding Mail Stop designations (*e.g.*, ''Box 4'' will now be ''Mail Stop 4''). Since the address for certain correspondence includes a Post Office Box number, the continued use of special Box designations in the address might have resulted in confusion between the Post Office Box number and the special Box designation (especially when the special Box designation is a box number).

Finally, the titles ''Commissioner of Patents and Trademarks,'' ''Assistant Commissioner for Patents,'' and ''Assistant Commissioner for Trademarks'' were changed to ''Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office,'' ''Commissioner for Patents,'' and ''Commissioner for Trademarks,'' respectively, in § 4713 of the American Inventors Protection Act of 1999 (AIPA). *See* Pub. L. 106–113, 113 Stat. 1501, 1501A–575 through 1501A–577 (1999).

This final rule also revises the rules of practice (with the exception of 37 CFR part 10) to reflect the current titles of Office officials as provided for in the AIPA.

**Discussion of Specific Rules**

Title 37 of the Code of Federal Regulations, is amended as follows:

*Part 1:* Part 1 is amended to: (1) Change each reference to ''Commissioner'' to read ''Director''; and (2) change each reference to ''Commissioner's'' to read ''Director's''.

Section 1.1 is amended to: (1) Change the address for general correspondence to: Director of the United States Patent and Trademark Office, PO. Box 1450, Alexandria, Virginia 22313–1450 (with Mail Stop designations as appropriate); (2) change the address for patent-related correspondence to: Commissioner for Patents, PO. Box 1450, Alexandria, Virginia 22313–1450; and (3) add paragraph headings.

Section 1.1(a) is also amended to: (1) Place the mailing address for all Office of Public Records correspondence concerning both patents and trademarks (documents to be recorded by Assignment Services Division and requests for certified or uncertified copies of patent or trademark documents) in a new § 1.1(a)(4); and (2) eliminate the reference to the coupon orders as coupon practice was abolished in November of 2000 (*see Changes to Implement Eighteen-Month Publication of Patent Applications,* 65 FR 57023, 57030 (Sept. 20, 2000), 1239 *Off. Gaz. Pat. Office* 63, 69 (Oct. 10, 2000) (final rule)).

Section 1.1(a) is also amended to provide that all correspondence in an application involved in an appeal to the Board of Patent Appeals and Interferences (Board) during the period from when an appeal docketing notice is issued until a decision has been rendered by the Board as well as any request for rehearing of a decision by the Board should be mailed to: Board of Patent Appeals and Interferences, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450. An appeal docketing notice is issued by the Board to notify the applicant that an appeal is ready for docketing at the Board. *See Revised Docketing Procedures for Appeals Arriving at the Board of Patent Appeals and Interferences,* 1260 *Off. Gaz. Pat. Office* 18 (July 2, 2002). Section 1.1(a) is also amended to provide that notices of appeal, appeal briefs, reply briefs, requests for oral hearing, as well as all other correspondence in an application involved in an appeal to the Board not otherwise provided for should be addressed as set out in § 1.1(a)(1)(i) (*i.e.*, Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313–1450). Section 1.1(a) is also amended to include the provisions formerly located in § 1.1(e) concerning patent interference correspondence, namely that except as an administrative patent judge or the Board may otherwise direct, all correspondence relating to patent interferences, or relating to patent applications or patents involved in an interference, should be mailed to: Mail Stop INTERFERENCE, Board of Patent Appeals and Interferences, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

Sections 1.1(f) and 1.1(i) are redesignated as §§ 1.1(e) and 1.19(f), respectively. As discussed above, the provisions of § 1.1(e) are now located in § 1.1(a)(1)(iii). Section 1.1(g) was formerly reserved and § 1.1(h) is now deleted. Section 1.1(h) provided that an applicant should use ''Box ITU'' as part of the address when an applicant or the applicant's representative submits a statement of use under § 2.88, or a request for extension of time to file a statement of use under § 2.89. With this change, a statement of use and a request for an extension of time to file a statement of use will be considered properly filed if addressed to the general address for trademark documents in compliance with § 1.1(a)(2)(i): Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513. The Office is eliminating Box ITU because the Office's experience has been that the use of that box is not helpful in sorting mail.

Section 1.6(b) is removed and reserved. The USPS no longer maintains

a ''pouch'' for correspondence addressed to the United States Patent and Trademark Office, and the USPS does not segregate correspondence addressed to the United States Patent and Trademark Office on the basis of the date of its receipt by the USPS.

Section 1.9 is amended to add a paragraph (j) to define Director as used in 37 CFR chapter I, except for 37 CFR part 10, as meaning the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. 37 CFR part 10 currently defines ''Director'' as meaning the Director of the Office of Enrollment and Discipline. The Office plans to propose changes to part 10 in a separate rule making, and also plans to change the use of ''Director'' in part 10 for consistency with the remaining provisions of 37 CFR chapter I as part of that rule making (at which time the phrase ''except for part 10'' will be deleted from § 1.9(j)).

Section 1.15 is removed and reserved as its provisions have been supplanted by the provisions of part 102.

Section 1.25 is amended by adding a paragraph (c), which specifies how a deposit account holder may submit a payment to the Office to replenish the deposit account. A payment to replenish a deposit account may be submitted by making the payment by electronic funds transfer through the Federal Reserve Fedwire System. Deposit account holders who want to use the Federal Reserve Fedwire System must provide the following information to their bank or financial institution: (1) Name of the Bank, which is Treas NYC (Treasury New York City); (2) Bank Routing Code, which is 021030004; (3) United States Patent and Trademark Office account number with the Department of the Treasury, which is 13100001; and (4) the deposit account holder's company name and deposit account number. The deposit account holder should inform his or her bank or financial institution to use due care to ensure that all pertinent account numbers are listed on the transaction because the failure to include the proper deposit account number will delay the processing of the replenishment. A second method of making a payment to replenish a deposit account is by credit card or electronic funds transfer over the Office's Internet Web site (*www.uspto.gov*). Specifically, from the Office's Web site homepage (*www.uspto.gov*), click on the ''Online Business'' tab, and then click the ''Revenue Accounting & Management'' tab, and then click the ''Maintain USPTO Deposit Accounts'' tab. A third method of making a payment to replenish a deposit account is by mailing the payment with the USPS to: Director of the United States Patent and Trademark Office, PO Box 70541, Chicago, Illinois 60673. Finally, a fourth method of making a payment to replenish a deposit account is by mailing the payment with a private delivery service or hand-carrying the payment to: Director of the United States Patent and Trademark Office, Deposit Accounts, One Crystal Park, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

Further information on deposit account replenishment may be obtained from the Office's Internet Web site (*http://www.uspto.gov/web/offices/ac/comp/fin/electron.htm*), or by contacting the Deposit Account Division at 703–305–4631.

Section 1.51(a) is amended to change ''Commissioner of Patents and Trademarks'' to ''Director of the United States Patent and Trademark Office'' for consistency with the change in nomenclature.

Sections 1.53(d)(9), 1.417, and 1.434(a) are amended to change their special Box designations to corresponding Mail Stop designations.

Section 1.302(c) is amended to provide that notices of appeal directed to the Director shall be mailed to or served by hand on the General Counsel as provided in § 104.2.

Section 1.434(d)(2) is amended to correct a grammatical error.

Section 1.480(b) is amended to change its special Box designation to a corresponding Mail Stop designation. Section 1.480(b) is also amended to add a reference to PCT Rule 53 (which provides for Demands under the PCT).

Section 1.627(a) is amended to change the reference to § 1.1(e) to a reference to § 1.1(a)(1)(iii) for consistency with the changes to § 1.1.

Section 1.676(d) is amended to change the address to the correspondence address set out in § 1.1(a)(1)(iii).

Section 1.740(a)(13) is amended to change ''Commissioner of Patents and Trademarks'' to ''Director of the United States Patent and Trademark Office'' for consistency with the change in nomenclature.

*Part 2:* Part 2 is amended to change each reference to ''Commissioner'' to read ''Director''.

Section 2.123(f)(2) is amended to change ''address the package, and forward the same to the Commissioner of Patents and Trademarks' to ''promptly forward the package to the address set out in § 1.1(a)(2)(i)''.

Section 2.145(b)(3) is amended to provide that notices of appeal directed to the Director shall be mailed to or served by hand on the General Counsel as provided in § 104.2.

*Part 3:* Part 3 is amended to change each reference to ''Commissioner of Patents and Trademarks'' or ''Commissioner'' to read ''Director''.

Section 3.27 is amended to change the address to: Mail Stop Assignment Recordation Services, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

*Part 4:* Section 4.3(c) is amended to change the address for complaints concerning invention promoters to: Mail Stop 24, Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313–1450.

Section 4.6 is amended to change the address for complaints concerning registered patent attorneys or agents to: Mail Stop OED, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

*Part 5:* Part 5 is amended to change each reference to ''Commissioner of Patents and Trademarks'' or ''Commissioner'' to read ''Commissioner for Patents''. Section 4732(a)(10)(B) of the AIPA amended 35 U.S.C. chapter 17 to change ''Commissioner'' to ''Commissioner of Patents'' (*sic*) rather than ''Director''. *See* 113 Stat. at 1501A–582. Therefore, the Office is amending part 5 to change each reference to ''Commissioner of Patents and Trademarks'' or ''Commissioner'' to read ''Commissioner for Patents'' (rather than ''Director'') for consistency with section 4732(a)(10)(B) of the AIPA.

Section 5.1(a) is amended to change the address to: Commissioner for Patents (Attention Licensing and Review), PO Box 1450, Alexandria, Virginia 22313–1450.

*Part 102:* Sections 102.1(b), 102.4(a), 102.10(b), 102.23(a), 102.24(a), and 102.29(b) are amended to change the address to: United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450 (with headings as appropriate). Sections 102.1(b), 102.23(a), and 102.24(a) are also amended to indicate that correspondence being delivered by hand should be delivered to Two Crystal Park, 2121 Crystal Drive, Suite 905, Arlington, Virginia.

*Part 104:* Section 104.1 is amended to define ''Director'' as meaning the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office for consistency with § 1.9(j).

*Part 150:* Part 150 is amended to change each reference to ''Commissioner'' to read ''Director'.

Section 150.1 is amended to define ''Director'' as meaning the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office for consistency with § 1.9(j).

Section 150.6 is amended to change the address to: Mail Stop 4, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

**Classification**

*Administrative Procedure Act:* Since this final rule is directed to changing the address for filing certain correspondence with the Office and changes in the titles of Office officials for consistency with the titles as provided in the AIPA, this final rule merely involves rules of agency organization, procedure, or practice within the meaning of 5 U.S.C. 553(b)(A). Accordingly, this final rule may be adopted without prior notice and opportunity for public comment under 5 U.S.C. 553(b) and (c), or thirty-day advance publication under 5 U.S.C. 553(d).

*Regulatory Flexibility Act:* As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. *See* 5 U.S.C. 603.

*Executive Order 13132:* This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

*Executive Order 12866:* This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

*Paperwork Reduction Act:* This rule making does not create any information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

**List of Subjects**

*37 CFR Part 1*

Administrative practice and procedure, Courts, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

*37 CFR Part 2*

Administrative practice and procedure, Courts, Lawyers, Trademarks.

*CFR Part 3*

Administrative practice and procedure, Inventions and patents, Reporting and record keeping requirements.

*CFR Part 4*

Administrative practice and procedure, Inventions and patents.

*CFR Part 5*

Classified information, Foreign relations, Inventions and patents.

*CFR Part 102*

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

*CFR Part 104*

Administrative practice and procedure, Claims, Courts, Freedom of information, Inventions and patents, Tort claims, Trademarks.

*CFR Part 150*

Administrative practice and procedure, Authority delegations, Semiconductor chips, Mask works.

For the reasons set forth in the preamble, 37 CFR parts 1, 2, 3, 4, 5, 102, 104, and 150 are amended as follows:

## PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2).

2. In 37 CFR part 1, except for § 1.23, revise all references to ''Commissioner'' to read ''Director''.

3. In 37 CFR part 1, revise all references to ''Commissioner's'' to read ''Director's''.

4. Section 1.1 is revised to read as follows:

### § 1.1 Addresses for correspondence with the United States Patent and Trademark Office.

(a) *In general.* Except as provided in paragraphs (a)(3)(i), (a)(3)(ii) and (d)(1) of this section, all correspondence intended for the United States Patent and Trademark Office must be addressed to either ''Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450'' or to specific areas within the Office as set out in paragraphs (a)(1), (a)(2) and (a)(3)(iii) of this section. When appropriate, correspondence should also be marked for the attention of a particular office or individual.

(1) *Patent correspondence.* (i) *In general.* All correspondence concerning patent matters processed by organizations reporting to the Commissioner for Patents should be addressed to: Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313–1450.

(ii) *Board of Patent Appeals and Interferences: Appeals.* All correspondence in an application involved in an appeal to the Board of Patent Appeals and Interferences during the period beginning when an appeal docketing notice is issued and ending when a decision has been rendered by the Board of Patent Appeals and Interferences, as well as any request for rehearing of a decision by the Board of Patent Appeals and Interferences, should be mailed to: Board of Patent Appeals and Interferences, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450. Notices of appeal, appeal briefs, reply briefs, requests for oral hearing, as well as all other correspondence in an application involved in an appeal to the Board of Patent Appeals and Interferences for which an address is not otherwise specified, should be addressed as set out in paragraph (a)(1)(i) of this section.

(iii) *Board of Patent Appeals and Interferences: Interferences.* Except as an administrative patent judge or the Board may otherwise direct, all correspondence relating to patent interferences, or relating to patent applications or patents involved in an interference, should be mailed to: Mail Stop INTERFERENCE, Board of Patent Appeals and Interferences, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

(2) *Trademark correspondence.*—(i) *In general.* All trademark-related documents filed on paper, except documents sent to the Assignment Services Division for recordation and requests for copies of trademark documents, should be addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

(ii) *Electronic applications.* An applicant may transmit an application for trademark registration electronically, but only if the applicant uses the Office's electronic form.

(3) *Office of General Counsel correspondence.*—(i) *Litigation and service.* Correspondence relating to pending litigation or otherwise within the scope of part 104 of this title shall be addressed as provided in § 104.2.

(ii) *Disciplinary proceedings.* Correspondence to counsel for the Director of the Office of Enrollment and Discipline relating to disciplinary proceedings pending before an Administrative Law Judge or the Director shall be mailed to: Office of the Solicitor, PO Box 16116, Arlington, Virginia 22215.

(iii) *Solicitor, in general.* Correspondence to the Office of the Solicitor not otherwise provided for shall be addressed to: Mail Stop 8, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

(iv) *General Counsel.* Correspondence to the Office of the General Counsel not otherwise provided for, including correspondence to the General Counsel relating to disciplinary proceedings, shall be addressed to: General Counsel, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

(v) *Improper correspondence.* Correspondence improperly addressed to a Post Office Box specified in paragraphs (a)(3)(i) and(a)(3)(ii) of this section will not be filed elsewhere in the United States Patent and Trademark Office, and may be returned.

(4) *Office of Public Records correspondence.*—(i) *Assignments.* All patent-related or trademark-related documents to be recorded by Assignment Services Division, except for documents filed together with a new application or under § 3.81 of this chapter, should be addressed to: Mail Stop Assignment Recordation Services, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450. See § 3.27.

(ii) *Documents.* All requests for certified or uncertified copies of patent or trademark documents should be addressed to: Mail Stop Document Services, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

(b) *Patent Cooperation Treaty.* Letters and other communications relating to international applications during the international stage and prior to the assignment of a national serial number should be additionally marked ''Mail Stop PCT.''

(c) *Reexamination.* Requests for reexamination should be additionally marked ''Mail Stop Reexam.''

(d) *Maintenance fee correspondence.*—(1) *Payments.* Payments of maintenance fees in patents not submitted electronically should be mailed to: United States Patent and Trademark Office, P.O. Box 371611, Pittsburgh, Pennsylvania 15250–1611.

(2) *Other correspondence.* Correspondence related to maintenance fees other than payments of maintenance fees in patents is not to be mailed to P.O. Box 371611, Pittsburgh, Pennsylvania 15250–1611, but must be mailed to: Mail Stop M Correspondence, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

(e) *Patent term extension.* All applications for extension of patent term under 35 U.S.C. 156 and any communications relating thereto intended for the United States Patent and Trademark Office should be additionally marked ''Mail Stop Patent Ext.'' When appropriate, the communication should also be marked to the attention of a particular individual, as where a decision has been rendered.

(f) *Provisional applications.* The filing of all provisional applications and any communications relating thereto should be additionally marked ''Mail Stop Provisional Patent Application.''

**Note:** Sections 1.1 to 1.26 are applicable to trademark cases as well as to national and international patent cases except for provisions specifically directed to patent cases. See § 1.9 for definitions of ''national application'' and ''international application.''

5. Section 1.6 is amended by removing and reserving paragraph (b).

**§ 1.6 Receipt of correspondence.**

* * * * *

(b) [Reserved]

* * * * *

6. Section 1.9 is amended by adding a new paragraph (j) to read as follows:

**§ 1.9 Definitions.**

* * * * *

(j) Director as used in this chapter, except for part 10 of this section, means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

**§ 1.15 [Removed and Reserved]**

7. Section 1.15 is removed and reserved.

8. Section 1.25 is amended by adding paragraph (c) to read as follows:

**§ 1.25 Deposit accounts.**

* * * * *

(c) A deposit account holder may replenish the deposit account by submitting a payment to the United States Patent and Trademark Office. A payment to replenish a deposit account must be submitted by one of the methods set forth in paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section.

(1) A payment to replenish a deposit account may be submitted by electronic funds transfer through the Federal Reserve Fedwire System, which requires that the following information be provided to the deposit account holder's bank or financial institution:

(i) Name of the Bank, which is Treas NYC (Treasury New York City);

(ii) Bank Routing Code, which is 021030004;

(iii) United States Patent and Trademark Office account number with the Department of the Treasury, which is 13100001; and

(iv) The deposit account holder's company name and deposit account number.

(2) A payment to replenish a deposit account may be submitted by credit card or electronic funds transfer over the Office's Internet Web site (www.uspto.gov).

(3) A payment to replenish a deposit account may be submitted by mail with the USPS to: Director of the United States Patent and Trademark Office, P.O. Box 70541, Chicago, Illinois 60673.

(4) A payment to replenish a deposit account may be submitted by mail with a private delivery service or hand-carrying the payment to: Director of the United States Patent and Trademark Office, Deposit Accounts, One Crystal Park, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

9. Section 1.51 is amended by revising paragraph (a) to read as follows:

**§ 1.51 General requisites of an application.**

(a) Applications for patents must be made to the Director of the United States Patent and Trademark Office.

* * * * *

10. Section 1.53 is amended by revising paragraph (d)(9) to read as follows:

**§ 1.53 Application number, filing date, and completion of application.**

* * * * *

(d) * * *

(9) Envelopes containing only requests and fees for filing an application under this paragraph should be marked ''Mail Stop CPA.'' Requests for an application under this paragraph filed by facsimile transmission should be clearly marked ''Mail Stop CPA.''

* * * * *

11. The undesignated center heading in Subpart B immediately before § 1.181 is revised to read as follows:

**Petitions and Action by the Director**

12. Section 1.302 is amended by revising paragraph (c) to read as follows:

**§ 1.302 Notice of appeal.**

* * * * *

(c) Notices of appeal directed to the Director shall be mailed to or served by hand on the General Counsel as provided in § 104.2.

13. Section 1.417 is revised to read as follows:

**§ 1.417 Submission of translation of international publication.**

The submission of the international publication or an English language translation of an international application pursuant to 35 U.S.C. 154(d)(4) must clearly identify the international application to which it pertains (§ 1.5(a)) and, unless it is being submitted pursuant to § 1.495, be clearly identified as a submission pursuant to 35 U.S.C. 154(d)(4). Otherwise, the submission will be treated as a filing under 35 U.S.C. 111(a). Such submissions should be marked ''Mail Stop PCT.''

14. Section 1.434 is amended by revising paragraphs (a) and (d)(2) to read as follows:

**§ 1.434 The request.**

(a) The request shall be made on a standardized form (PCT Rules 3 and 4). Copies of printed Request forms are available from the United States Patent and Trademark Office. Letters requesting printed forms should be marked ''Mail Stop PCT.''

* * * * *

(d) * * *

(2) Shall include a reference to any prior-filed national application or international application designating the United States of America, if the benefit of the filing date for the prior-filed application is to be claimed; and

* * * * *

15. Section 1.480 is amended by revising paragraph (b) to read as follows:

**§ 1.480 Demand for international preliminary examination.**

* * * * *

(b) The Demand shall be made on a standardized form (PCT Rule 53). Copies of the printed Demand forms are available from the United States Patent and Trademark Office. Letters requesting printed Demand forms should be marked ''Mail Stop PCT.''

* * * * *

16. Section 1.627 is amended by revising paragraph (a) to read as follows:

**§ 1.627 Preliminary statement, sealing before filing, opening of statement.**

(a) The preliminary statement and copies of any drawing or written description shall be filed in a sealed envelope bearing only the name of the party filing the statement and the style (*e.g.*, Jones v. Smith) and number of the interference. The sealed envelope should contain only the preliminary statement and copies of any drawing or written description. If the preliminary statement is filed through the mail, the sealed envelope should be enclosed in an outer envelope addressed in accordance with § 1.1(a)(1)(iii).

* * * * *

17. Section 1.676 is amended by revising the introductory text of paragraph (d) to read as follows:

**§ 1.676 Certification and filing by officer, marking exhibits.**

* * * * *

(d) Unless the parties agree otherwise in writing or on the record at the deposition, the officer shall securely seal the certified transcript in an envelope endorsed with the style of the interference (*e.g.*, Smith v. Jones), the interference number, the name of the witness, and the date of sealing and shall promptly forward the envelope to the address set out in § 1.1(a)(1)(iii). Documents and things produced for inspection during the examination of a witness, shall, upon request of a party, be marked for identification and annexed to the certified transcript, and may be inspected and copied by any party, except that if the person producing the documents and things desires to retain them, the person may:

* * * * *

18. Section 1.740 is amended by revising paragraph (a)(13) to read as follows:

**§ 1.740 Formal requirements for application for extension of patent term; correction of informalities.**

(a) * * *

(13) A statement that applicant acknowledges a duty to disclose to the Director of the United States Patent and Trademark Office and the Secretary of Health and Human Services or the Secretary of Agriculture any information which is material to the determination of entitlement to the extension sought (*see* § 1.765);

* * * * *

## PART 2—RULES OF PRACTICE IN TRADEMARK CASES

19. The authority citation for 37 CFR part 2 is revised to read as follows:

**Authority:** 15 U.S.C. 1123; 35 U.S.C. 2(b)(2).

20. In 37 CFR part 2, revise all references to ''Commissioner'' to read ''Director'.

21. Section 2.123 is amended by revising paragraph (f)(2) to read as follows:

**2.123 Trial testimony in inter partes cases.**

* * * * *

(f) * * *

(2) If any of the foregoing requirements in paragraph (f)(1) of this section are waived, the certificate shall so state. The officer shall sign the certificate and affix thereto his seal of office, if he has such a seal. Unless waived on the record by an agreement, he shall then securely seal in an envelope all the evidence, notices, and paper exhibits, inscribe upon the envelope a certificate giving the number and title of the case, the name of each witness, and the date of sealing. The officer or the party taking the deposition, or its attorney or other authorized representative, shall then promptly forward the package to the address set out in § 1.1(a)(2)(i). If the weight or bulk of an exhibit shall exclude it from the envelope, it shall, unless waived on the record by agreement of all parties, be authenticated by the officer and transmitted by the officer or the party taking the deposition, or its attorney or other authorized representative, in a separate package marked and addressed as provided in this section.

* * * * *

22. Section 2.145 is amended by revising paragraph (b)(3) to read as follows:

**§ 2.145 Appeal to court and civil action.**

* * * * *

(b) * * *

(3) Notices of appeal directed to the Director shall be mailed to or served by hand on the General Counsel as provided in § 104.2.

* * * * *

23. The undesignated center heading immediately before § 2.146 is revised to read as follows:

**Petitions and Action by the Director**

## PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

24. The authority citation for 37 CFR part 3 continues to read as follows:

**Authority:** 15 U.S.C. 1123; 35 U.S.C. 2(b)(2).

25. In 37 CFR part 3, revise all references to ''Commissioner'' or ''Commissioner of Patents and Trademarks'' to read ''Director''.

26. Section 3.27 is revised to read as follows:

**§ 3.27 Mailing address for submitting documents to be recorded.**

Documents and cover sheets to be recorded should be addressed to Mail Stop Assignment Recordation Services, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450, unless they are filed together with new applications or with a request under § 3.81.

## PART 4—COMPLAINTS REGARDING INVENTION PROMOTERS

27. The authority citation for 37 CFR part 4 is revised to read as follows:

**Authority:** 35 U.S.C. 2(b)(2) and 297.

28. Section 4.3 is amended by revising paragraph (c) to read as follows:

**§ 4.3 Submitting Complaints.**

* * * * *

(c) The complaint should fairly summarize the action of the invention promoter about which the person complains. Additionally, the complaint should include names and addresses of persons believed to be associated with the invention promoter. Complaints, and any replies, must be addressed to: Mail Stop 24, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313–1450.

* * * * *

29. Section 4.6 is revised to read as follows:

**§ 4.6 Attorneys and Agents.**

Complaints against registered patent attorneys and agents will not be treated under this section, unless a complaint fairly demonstrates that invention promotion services are involved. Persons having complaints about registered patent attorneys or agents should contact the Office of Enrollment and Discipline at Mail Stop OED, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450, and the attorney discipline section of the attorney's state licensing bar if an attorney is involved.

## PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

30. The authority citation for 37 CFR Part 5 is revised to read as follows:

**Authority:** 35 U.S.C. 2(b)(2), 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.*; the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; the Nuclear Non Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.*; and the delegations in the regulations under these Acts to the Director (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

31. In 37 CFR part 5, revise all references to ''Commissioner'' or ''Commissioner of Patents and Trademarks'' to read ''Commissioner for Patents'.

32. Section 5.1 is amended by revising paragraph (a) to read as follows:

**§ 5.1 Applications and correspondence involving national security.**

(a) All correspondence in connection with this part, including petitions, should be addressed to: Commissioner for Patents (Attention Licensing and Review), P.O. Box 1450, Alexandria, Virginia 22313–1450.

* * * * *

## PART 102—DISCLOSURE OF GOVERNMENT INFORMATION

33. The authority citation for 37 CFR part 102 continues to read as follows:

**Authority:** 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 35 U.S.C. 2(b)(2), 21, 41, 42, 122; 44 U.S.C. 3101.

34. Section 102.1 is amended by revising paragraph (b) to read as follows:

**§ 102.1 General.**

* * * * *

(b) As used in this subpart, *FOIA Officer* means the USPTO employee designated to administer FOIA for USPTO. To ensure prompt processing of a request, correspondence should be addressed to the FOIA Officer, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450, or delivered by hand to Two Crystal Park, 2121 Crystal Drive, Suite 905, Arlington, Virginia.

35. Section 102.4 is amended by revising paragraph (a) to read as follows:

**§ 102.4 Requirements for making requests.**

(a) A request for USPTO records that are not customarily made available to the public as part of USPTO's regular informational services must be in writing, and shall be processed under FOIA, regardless of whether FOIA is mentioned in the request. Requests should be sent to the USPTO FOIA Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450 (records FOIA requires to be made regularly available for public inspection and copying are addressed in § 102.2(c)). For the quickest handling, the request letter and envelope should be marked ''Freedom of Information Act Request.'' For requests for records about oneself, § 102.24 contains additional requirements. For requests for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to the requester or proof that individual is deceased (for example, a copy of a death certificate or an obituary) facilitates processing the request.

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36. Section 102.10 is amended by revising paragraph (b) to read as follows:

**§ 102.10 Appeals from initial determinations or untimely delays.**

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(b) Appeals shall be decided by a Deputy General Counsel. Appeals should be addressed to the General Counsel, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450. Both the letter and the appeal envelope should be clearly marked ''Freedom of Information Appeal''. The appeal must include a copy of the original request and the initial denial, if any, and may include a statement of the reasons why the records requested should be made available and why the initial denial, if any, was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided.

* * * * *

37. Section 102.23 is amended by revising paragraph (a) to read as follows:

**§ 102.23 Procedures for making inquiries.**

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit an inquiry to USPTO. The inquiry should be made either in person at Two Crystal Park, 2121 Crystal Drive, Suite 905, Arlington, Virginia, or by mail addressed to the Privacy Officer, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450, or to the official identified in the notification procedures paragraph of the systems of records notice published in the **Federal Register**. If an individual believes USPTO maintains a record pertaining to that individual but does not know which system of records might contain such a record, the USPTO Privacy Officer will provide assistance in person or by mail.

* * * * *

38. Section 102.24 is amended by revising paragraph (a) to read as follows:

**§ 102.24 Procedures for making requests for records.**

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request for access to records to USPTO. The request should be made either in person at Two Crystal Park, 2121 Crystal Drive, Suite 905, Arlington, Virginia, or by mail addressed to the Privacy Officer, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

* * * * *

39. Section 102.29 is amended by revising paragraph (b) to read as follows:

**§ 102.29 Appeal of initial adverse determination on correction or amendment.**

* * * * *

(b) An appeal should be addressed to the General Counsel, United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450. An appeal should include the words ''PRIVACY APPEAL'' in capital letters at the top of the letter and on the face of the envelope. An appeal not addressed and marked as provided herein will be so marked by USPTO personnel when it is so identified and will be forwarded immediately to the General Counsel. An appeal which is not properly addressed by the individual will not be deemed to have been ''received'' for purposes of measuring the time periods in this section until actual receipt by the General Counsel. In each instance when an appeal so forwarded is received, the General Counsel shall notify the individual that his or her appeal was improperly addressed and the date when the appeal was received at the proper address.

* * * * *

## PART 104—LEGAL PROCESSES

40. The authority citation for 37 CFR part 104 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2), 10, 23, 25; 44 U.S.C. 3101.

41. Section 104.1 is amended by revising the second sentence to read as follows:

**§ 104.1 Definitions.**

* * * * *

*Director* means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (*see* § 1.9(j)).

* * * * *

## PART 150—REQUESTS FOR PRESIDENTIAL PROCLAMATIONS PURSUANT TO 17 U.S.C. 902(a)(2)

42. The authority citation for 37 CFR part 150 is revised to read as follows:

**Authority:** 35 U.S.C. 2(b)(2); E.O. 12504, 50 FR 4849; 3 CFR, 1985 Comp., p. 335.

43. In 37 CFR part 150, revise all references to ''Commissioner'' to read ''Director''.

44. Section 150.1 is amended by revising paragraph (a) to read as follows:

**§ 150.1 Definitions.**

(a) *Director* means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (*see* § 1.9(j)).

* * * * *

45. Section 150.6 is revised to read as follows:

**§ 150.6 Mailing address.**

Requests and all correspondence pursuant to these guidelines shall be addressed to: Mail Stop 4, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, Virginia 22313–1450.

Dated: March 19, 2003.

**James E. Rogan,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 03–6971 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–16–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 312

**[FRL–7472–3]**

**RIN 2050–AF05**

## Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA and Notice of Future Rulemaking Action

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** On January 24, 2003, we published a direct final rule entitled ''Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA and Notice of Future Rulemaking Action'' (68 FR 3430). We published the direct final rule to clarify a provision included in recent amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Specifically, the direct final rule addressed the interim standard set by Congress in the Small Business Liability Relief and Brownfields Revitalization Act (''the Brownfields Law'') for conducting ''all appropriate inquiry.'' We stated in the direct final rule that if we received adverse comment by February 24, 2003, we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comment on the direct final rule, and therefore are withdrawing the direct final rule. We will address those comments in a subsequent final action on the parallel proposed rule also published on January 24, 2003 (68 FR 3478). As stated in the parallel proposed rule, we will not institute a second comment period on this action.

**DATES:** As of March 25, 2003, EPA withdraws the direct final rule ''Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA and Notice of Future Rulemaking Action'' published at 68 FR 3430, on January 24, 2003.

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

For more detailed information on specific aspects of this rule, contact Patricia Overmeyer, Office of Brownfields Clean up and Redevelopment (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, 202–566–2774, *overmeyer.patricia@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### General Information

EPA established an official public docket for the direct final rule and its companion proposed rule under Docket ID No. SFUND–2002–0007. The official public docket consists of the documents specifically referenced in the direct final rule, the comments received by the Agency in response to the proposed rule, and other information related to the proposed and direct final rules. 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 EPA Docket Center located at 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday

through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 566–0276. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

**Summary of Today's Action**

EPA published a direct final rule on January 24, 2003, clarifying the interim standard for all appropriate inquiry established in the Small Business Liability Relief and Brownfields Revitalization Act for *bona fide* prospective purchasers, contiguous property owners, and those parties wishing to establish an innocent landowner defense under CERCLA. The direct final rule stated that such property owners or prospective purchasers could use the current version of ASTM standard E1527 (*i.e.*, E1527–00) for conducting all appropriate inquiry as provided in CERCLA section 101(35)(B) for properties purchased on or after May 31, 1997. In addition, the direct final rule stated that ASTM's previous standard, E1527–97, could be used for conducting all appropriate inquiry. ASTM's E1527–97 standard, entitled ''Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process,'' is the interim standard included by Congress in the Small Business Liability Relief and Brownfields Revitalization Act.

The companion proposed rule, also published on January 24, 2003, invited comment on the direct final rule and stated that if adverse comment was received by February 24, 2003, the direct final rule would not become effective and a notice would be published in the **Federal Register** to withdraw the direct final rule before the March 25, 2003, effective date. EPA subsequently received adverse comment on the direct final rule. EPA plans to address those comments in a subsequent action. Today's action withdraws the direct final rule ''Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA and Notice of Future Rulemaking Action.''

**List of Subjects in 40 CFR Part 312**

Environmental protection, Administrative practice and procedure, Hazardous substances.

Dated: March 18, 2003.

**Christine Todd Whitman,**

*Administrator.*

[FR Doc. 03–7050 Filed 3–24–03; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

**[CS Docket No. 00–2; FCC 02–287]**

### Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions of Broadcast Signals

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** This document announces the effective date of certain sections of the Commission's network non-duplication protection, syndicated exclusivity and sports blackout protection rules. Certain sections of the rule contained information collection requirements that required the approval of the Office of Management and Budget (''OMB'') before they could become effective. Those sections of the network non-duplication protection, syndicated exclusivity and sports blackout protection rules have been approved by OMB.

**DATES:** The amendments to 47 CFR 76.122(c)(2) and 76.127(c), published at 67 FR 68944, November 14, 2002, will become effective on March 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Peter Corea of the Policy Division, Media Bureau at (202) 418–7200, TTY (202) 418–7172, or via Internet at *pcorea@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** On October 17, 2002, the Commission released an Order on Reconsideration in CS Docket No. 00–2, pertaining to the Commission's network non-duplication, syndicated exclusivity and sports blackout rules as applied to satellite retransmission of broadcast signals. A summary of the Order on Reconsideration was published in the **Federal Register** at 67 FR 68944, November 14, 2002. The Order on Reconsideration made revisions to conform the satellite rules to the cable rules and amended a rule to permit sports rights holders with a discernable season to submit blackout notifications for an entire season, but also to establish a date certain by when those notifications must be received by satellite carriers. Sections 76.122(c)(2) and 76.127(c) of the rules contained new or modified information collection requirements that required OMB approval before they could become effective. The Commission received OMB approval for the information collection requirements on March 10, 2003. *See* OMB No. 3060–0960, 67 FR 5291, February 3, 2003. Accordingly, §§ 76.122(c)(2) and 76.127(c) of the rules will become effective on March 25, 2003. This document constitutes publication of the effective date of those sections.

Pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511, an agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, 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. Questions concerning the OMB control numbers and expiration dates should be directed to Les Smith, Federal Communications Commission, (202) 418–0217.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–6969 Filed 3–24–03; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

**[CS Docket No. 00–2; FCC 02–287]**

### Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions of Broadcast Signals; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Communications Commission published in the **Federal Register** of November 14, 2002, a document concerning application of network non-duplication, syndicated exclusivity, and sports blackout rules to satellite retransmissions of broadcast signals. Inadvertently, the instruction that notifications given pursuant to § 76.127 must be received by the satellite carrier was inserted incorrectly. This document corrects that error.

**DATES:** Effective March 25, 2003. An announcement of effective date is published elsewhere in this issue of the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Peter Corea of the Policy Division,

Media Bureau at (202) 418–7200, TTY (202) 418–7172, or via Internet at *pcorea@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

## Correction

In rule FR Doc. 02–28894 published on November 14, 2002 (67 FR 68944), make the following corrections. On page 68951 in the second column, in the amendment to § 76.127, revise paragraph (c) as follows:

* * * * *

(c) Notifications given pursuant to this section must be received by the satellite carrier:

(1) With respect to regularly scheduled events, within forty-eight (48) hours after the time of the telecast to be deleted is known; or, for events that comprise a season or pre-season period, fifteen (15) days prior to the first event of the season or pre-season, respectively; and no later than the Monday preceding the calendar week (Sunday-Saturday) during which the program deletion is to be made.

(2) As to events not regularly scheduled and revisions of notices previously submitted, within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

* * * * *

## List of Subjects in 47 CFR Part 76

Cable television, Satellite carriers, Television broadcast stations.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–6970 Filed 3–24–03; 8:45 am]

**BILLING CODE 6712–01–P**

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# DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR Parts 171 and 175

**[Docket No. RSPA–00–7762 (HM–206C)]**

**RIN 2137–AD29**

## Hazardous Materials: Availability of Information for Hazardous Materials Transported by Aircraft

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** RSPA is amending the Hazardous Materials Regulations to require an aircraft operator transporting a hazardous material to: Place a telephone number, on the notification of pilot-in-command or in the cockpit of the aircraft, that can be contacted during an in-flight emergency to obtain information about any hazardous materials aboard the aircraft; retain and provide upon request a copy of the notification of pilot-in-command, or the information contained in it, at the aircraft operator's principal place of business, or the airport of departure, for 90 days, and at the airport of departure until the flight leg is completed; and make readily accessible, and provide upon request, a copy of the notification of pilot-in-command, or the information contained in it, at the planned airport of arrival until the flight leg is completed. The intent of these amendments is to increase the level of safety associated with the transportation of hazardous materials aboard aircraft.

**DATES:** Effective Date: The effective date of these amendments is October 1, 2003.

Delayed Compliance Date: Compliance with the amendments adopted in this final rule is required beginning on October 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** John A. Gale or Gigi Corbin, Office of Hazardous Materials Standards, telephone (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Under the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), an offeror of a hazardous material must prepare a signed shipping paper containing the quantity and a basic shipping description of the material being offered for transportation (*i.e.*, proper shipping name, hazard class, UN or NA identification number, and packing group); certain emergency response information; and a 24-hour emergency response telephone number. (49 CFR part 172, Subparts C and G). Additional information may be required depending on the specific hazardous material being shipped. (49 CFR 172.203).

When hazardous material is transported by air, a copy of the shipping paper must accompany the shipment during transportation, and the aircraft operator must provide the pilot-in-command of the aircraft written information relative to the hazardous materials on board the aircraft. (49 CFR 175.33 and 175.35). For each hazardous materials shipment, the information in the notification of pilot-in-command (NOPC) must include:

(1) Proper shipping name, hazard class, and identification number;

(2) technical and chemical group name, if applicable;

(3) any additional shipping description requirements applicable to specific types or shipments of hazardous materials or to materials shipped under International Civil Aviation Organization (ICAO) requirements;

(4) total number of packages;

(5) net quantity or gross weight, as appropriate, for each package;

(6) the location of each package on the aircraft;

(7) for Class 7 (radioactive) materials, the number of packages, overpacks or freight containers, their transport index, and their location on the aircraft; and

(8) an indication, if applicable, that a hazardous material is being transported under terms of an exemption.

This information must be readily available to the pilot-in-command during flight. In essence, the NOPC provides the same information to emergency response personnel as a shipping paper for transportation by public highway. In addition, emergency response information applicable to the specific hazardous materials being transported by aircraft must be available for use at all times the materials are present on the aircraft, and must be maintained on board in the same manner as the NOPC. (*See* Subpart G of part 172 for requirements relating to emergency response information.) In an emergency situation, the flight crew may be able to transmit information concerning the hazardous materials aboard the aircraft to air traffic control, or emergency responders may be able to retrieve the information from the aircraft after it lands. However, retrieval of the information from the flight crew may not be practical during an in-flight emergency because the flight crew may be attending to more pressing tasks. Also, in many emergencies the aircraft is damaged or destroyed, making retrieval of this information from the aircraft difficult or impossible.

On February 13, 2002, RSPA issued a notice of proposed rulemaking (NPRM) to amend the HMR to assure that information on the hazardous materials carried aboard the aircraft is available to emergency responders through sources other than the flight crew (67 FR 6669). The NPRM proposed to amend the HMR to require an aircraft operator to: Place a telephone number on the notification of pilot-in-command that can be contacted during an in-flight emergency to obtain information about any

hazardous materials aboard the aircraft; retain a copy of the notification of pilot-in-command at the aircraft operator's principal place of business for one year; retain and make readily accessible a copy of the notification of pilot-in-command, or the information contained in it, at the airport of departure until the flight leg is completed; and make readily accessible a copy of the notification of pilot-in-command, or the information contained in it, at the planned airport of arrival until the flight leg is completed.

The amendments adopted in this final rule respond to a recommendation of the National Transportation Safety Board (NTSB) and are consistent with recent changes to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). The NTSB recommends that RSPA:

> Require, within two years, that air carriers transporting hazardous materials have the means, 24 hours per day, to quickly retrieve and provide consolidated specific information about the identity (including proper shipping name), hazard class, quantity, number of packages, and location of all hazardous material on an airplane in a timely manner to emergency responders. (A–98–80).

This recommendation is contained in NTSB's August 12, 1998, letter to RSPA, which has been placed in the public docket.

The ICAO Dangerous Goods Panel also considered additional steps that could be taken to improve the availability of information in the event of an aircraft incident. As a result, the Panel revised the ICAO Technical Instructions to: (1) Require the NOPC to be readily accessible at the airports of departure and arrival; and (2) allow an aircraft operator to provide a phone number where a copy of the NOPC could be obtained. In an emergency, the pilot would relay the phone number instead of the specific hazardous materials aboard the aircraft to an air traffic controller (*see* ICAO Technical Instructions 7;4.3). For informational purposes, we placed in the Docket an excerpt from the reports of the ICAO Dangerous Goods Panel reflecting discussions on this topic and relevant changes for inclusion in the 2001–2002 and 2003–2004 editions of the ICAO Technical Instructions.

On August 15, 2000, we issued an advance notice of proposed rulemaking (ANPRM) requesting comments and suggestions on ways to implement the NTSB recommendation and the need for this or other changes to the HMR (65 FR 49777). The ANPRM solicited comments on past incidents; practices and procedures currently in use and their costs; information needed by emergency responders; and the benefit, feasibility, and funding of a centralized reporting system (CRS).

## II. Discussion of Comments

### *A. Place a Telephone Number on the NOPC*

Two commenters supported our proposal to place a telephone number on the NOPC that can be contacted during an in-flight emergency to obtain information about any hazardous materials aboard the aircraft. Emery Forwarding stated that it is reasonable to provide such a telephone number on the NOPC, and aircraft operators should have a single point of control that could be contacted for hazmat information. Emery went on to say the telephone number would take little space on the NOPC and the primary cost would be in the modification of internal computer systems. The International Pilots Association (IPA) stated that, in an emergency, the telephone number relieves the crew from having to ''read off a lot of information at a time when they probably have more urgent matters to attend to''. The commenter pointed out that providing a telephone number instead of detailed information about the hazardous materials is consistent with ICAO Technical Instructions 7;4.3. At the same time, IPA questioned who would be staffing this telephone number. IPA stated that the point of contact at United Parcel Services (UPS) is the Dispatcher. IPA opposed the Dispatcher as the contact point and suggested the telephone number should be another department in order to allow the dispatcher to work with the crew to resolve the immediate situation.

The Air Line Pilots Association (ALPA) commented that the requirement for a telephone number on the NOPC that could be contacted during an in-flight emergency to obtain information about any hazardous materials aboard the aircraft would have limited safety benefits. Due to the nature of most in-flight emergencies, the flight crew may have insufficient time to transmit any information from the NOPC. Even if the crew had time to transmit information from the NOPC to Air Traffic Control (ATC), the presence of two telephone numbers (emergency response and hazmat information) could be potentially confusing. ALPA conceded that the addition of the phone number is a slight improvement over the present system, but the situation addressed by the telephone number would be better addressed by a more robust hazardous materials tracking system.

Two commenters disagreed with the proposal. FedEx contended that it should be sufficient for the flight crew to inform ATC whether or not hazardous material is aboard the aircraft as it would allow the crew to continue with the more pressing tasks of the emergency. FedEx stated that ATC would contact the aircraft operator with the flight number and obtain the required hazardous materials information from a single contact of the operator. The Air Transport Association (ATA) also stated that the flight crew should be able to contact a single telephone contact known to flight crews and that many air carriers have already identified a single location to become responsible for this function, and airlines should be permitted to designate the location.

RSPA continues to believe that each airline that is transporting hazardous materials should maintain a phone number that is monitored at all times the aircraft is in flight by a person from whom the information in the NOPC can be obtained. In the NPRM, RSPA stated that one of the problems faced by emergency responders in an aviation emergency is that a flight crew may not have time or otherwise be able to provide information on the hazardous material aboard an aircraft. A phone number that is monitored by a person from whom the information in the NOPC can be obtained could be used in those incidents where a pilot does not have time to provide an air traffic controller the information on the NOPC. However, RSPA does agree with the commenter who requested that the telephone number be allowed to be placed in a centralized location on the aircraft and not the NOPC. Therefore, RSPA is adopting the proposal to require aircraft operators to monitor a telephone number while the aircraft is in flight by a person whom the information in the NOPC can be obtained, but is allowing the phone number to be placed on the NOPC or in a location on the aircraft that is known to the flight crew.

### *B. Retention of NOPC During Flight*

In the NPRM, we proposed to require aircraft operators to retain and make readily accessible a copy of the NOPC, or the information contained in it, at the airport of departure until the flight leg is completed and make readily accessible a copy of the NOPC, or the information contained in it, at the airport of arrival until the flight leg is complete. Most commenters supported retaining and making readily accessible

''the information contained in the NOPC'' at the airport of departure. They agreed that the hazardous material information must be readily available and in a format that is easily understood by emergency personnel.

While the commenters generally agreed with the proposal that the information contained in the NOPC must be retained and readily accessible at the airport of departure, several of them pointed out that in an emergency, the aircraft most likely will not land at the planned destination airport. The commenters stated that having copies of the NOPC at the planned airport of arrival would not be useful. ATA stated that in all likelihood, the flight will divert ''to the nearest suitable airport''. The information would have to be obtained from the last departure airport.

The ATA stated that air carriers may have no choice but to automate in order to comply with the requirements in this rulemaking and that it is unrealistic to expect large-scale air carriers to duplicate the NOPC, file the copied form, and transmit it by fax. ATA stated that if carriers did utilize a fax system to manage this information, it is reasonable to assume that these requirements will add 10 minutes of additional work to each flight. ATA went on to say that if we estimate that one-third of the 19,000 daily flights carry hazardous materials, utilizing the $18 per hour labor rate yields a total cost of almost $7,000,000 per year.

ALPA questioned when the required hazardous materials information must be accessible at the destination airport. ALPA asked if the departure of a flight from Chicago to Tokyo would need to be delayed if station personnel in Tokyo had not yet received the required information. ALPA stated that with long transcontinental or international flights, the destination airport may not be staffed at the time of departure from the originating station. Requiring personnel to remain at an otherwise closed station for the purpose of accessing hazardous material information appears to create significant expense with very little, if any, safety benefit.

ALPA stated the best way to make improvements in the availability of the hazardous material information is through a tracking system based around an airline's dispatch or operations control center, not the airports of departure or arrival. ALPA pointed out that in the U.S. all airline flight operations must maintain a flight following system capable of tracking an airplane through its entire flight, including intermediate stops and diversions. The dispatcher and pilot-in-command share operational authority for the flight. ALPA stated that the dispatch or operations control center is the natural location for the hazardous material information. The dispatcher is required to monitor the flight and would most likely be the first person within the airline to be aware of a flight diversion due to an emergency. Dispatchers would work closely with corporate emergency response to an accident. ALPA pointed out that dispatchers are certificated, highly trained individuals, and often have access to a multitude of advanced communications equipment and contact information for a variety of emergency response situation.

NTSB stated the NPRM fails to ensure that the air carrier has the ability to quickly provide emergency responders with a consolidated list that not only identifies each hazardous material on board the aircraft but also the quantity and location of each hazardous materials package on the aircraft. Maintaining the NOPC at the departure and arrival points of an aircraft does not ensure that air carriers will provide the consolidated list in a timely manner. If an aircraft diverts, the aircraft operator would still have to transmit a copy of the NOPC or assemble a list and then transmit it. Neither is timely. If the air carrier has the consolidated list prior to the departure of each flight, the air carrier could easily transmit a consolidated list to emergency responders at the scene.

NTSB pointed out that for many carriers the NOPC is a multi-part form with the hazardous materials information on the individual shipping papers. In an emergency, when the onboard NOPC is not available or accessible, the carrier must retrieve a copy of the NOPC at the point of origin and collect the shipping papers for the individual hazardous material shipments. The carrier must then transmit copies of the individual shipping papers or consolidate the information into a list before transmitting to emergency responders. The NTSB stated that this unnecessarily delays the accurate transmission of the hazardous materials information. NTSB stated that the final rule under this docket should include an explicit requirement that an air carrier must have the capability to provide emergency responders with a consolidated list of hazardous materials on any of its aircraft and appropriate information about those materials.

Several commenters stated that the requirements in the NPRM are only manageable with an automated tracking system. FedEx agreed with the proposal to have the NOPC accessible at the airports of departure and arrival until the flight leg is completed, but only if RSPA requires aircraft operators to fully automate or computerize the required hazmat information. FedEx emphasized how burdensome the task would be if not automated. FedEx cited its Memphis hub with 160 flights departing within a matter of hours and stated that, without an automated system, the company would be required to fax paper copies to the destination airports so that the information would be available prior to the scheduled arrival time.

As we stated in the NPRM, emergencies involving hazardous materials transported by aircraft provide difficulties to emergency responders not usually encountered in other modes of transportation. The flight crew may not have time or otherwise be able to provide information during or immediately after the emergency. An aircraft involved in an accident may be damaged to such an extent the information cannot be retrieved from it. In such instances, emergency responders may not know what, if any, hazardous materials are aboard the aircraft. These difficulties cause us to shift our focus away from retrieving hazardous materials information aboard the aircraft or from air crew members. We continue to believe that these problems support a requirement for information to be accessible from a source other than the aircraft flight crew. We also agree with the comment to the ANPRM that stated that the additional risk posed during an emergency by properly prepared hazardous materials shipments may not be significant considering the standard fuel capacity of commercial aircraft. A system that utilizes the information contained in the NOPC can appropriately address these problems without the need for costly new computer or paper tracking systems.

Therefore, as proposed, we are amending the HMR to require an aircraft operator to: (1) Retain and make readily accessible a copy of the NOPC, or the information contained in it, at the airport of departure until the flight leg is completed; and (2) make readily accessible a copy of the NOPC, or the information contained in it, at the planned airport of arrival until the flight leg is completed. Nothing in the rule requires, however, that an aircraft operator has to fax every NOPC to its final destination before a flight takes-off or lands. The airport of arrival must only have the means available to retrieve the NOPC. With facsimile machines and email capabilities, companies can easily store the information at the airport of departure

and then, when necessary, transmit it to the airport of arrival very quickly. Therefore, a flight would not have to be held on the ground to wait for a NOPC to be faxed to its airport of arrival. In addition, we are not mandating that airlines retain staff at both airports of arrival and destination while an aircraft is in flight. However, the airport of departure and arrival must be able to receive and transmit the information to appropriate government personnel in such a timely manner that emergency responders can make response mitigation decisions. It is our belief that the act of filing and maintaining this information in a manner that is readily available should impose a marginal cost on each flight since (1) the NOPC is already being created at the airport of departure; and (2) the airport of arrival only requires the information be readily available, which should permit the faxing of the information when requested by appropriate authorities, not after each flight.

In response to commenters who concluded that a computerized tracking system is the only opportunity to comply with this NPRM, we agree that a computer tracking system would enhance the transmission of the hazmat information on the NOPC and believe that it is an acceptable method for complying with the amendments. However, we disagree with the conclusion that it is the only method for compliance. We believe that the hazmat information contained on the NOPC can be managed without a computerized tracking system. Mandating all aircraft operators to install such a system would greatly disadvantage smaller air carriers. Air carriers who already have a computerized tracking system or are in the process of developing such a system, may use or modify their existing system to have the capability to transmit the hazmat information to other locations as required by this final rule.

We agree with the commenter that stated that an air carrier should have the capability to provide emergency responders with a consolidated list of hazardous materials aboard their aircraft, however, we did not propose such a requirement and, therefore, is beyond the scope of this rulemaking. We note that in order to provide emergency responders the required information without any undue delay it may be necessary for some carriers to use a consolidated list.

We are also revising the HMR to clarify that the NOPC must identify all hazardous materials carried on the plane, even those loaded at earlier departure points. These changes to the HMR will provide emergency responders with timely and consolidated information about the identity (including proper shipping name, hazard class, quantity, and number of packages), and location of all hazardous material on an airplane.

*C. Retention of NOPC After Completion of the Flight*

Most commenters objected to the proposal to retain a copy of the NOPC or an electronic image thereof for one year after completion of the flight. Two commenters (UPS and ATA) suggested that ''the information contained in'' the NOPC is important, not the form itself. The commenters stated an aircraft operator should be allowed to retain the ''information contained in'' the NOPC rather than the actual NOPC and went on to say that for emergency responders, the essential information consists of the hazardous materials shipping description for each material loaded on the aircraft, the amount of hazardous material in the shipment, and its location on the aircraft. These elements should be available away from the aircraft and presented to emergency responders. The commenters stated that the other information on the NOPC will not provide an emergency responder with information necessary to respond to an incident and could in fact easily distract from the emergency response. The ATA commented that if RSPA requires the retention and provision of copies of the NOPC itself, emergency responders will criticize the results as distracting. RSPA should not require an operator to retain and transmit superfluous information. The less complicated the information, the easier the retrieval in an emergency.

UPS stated that RSPA lacks justification for permitting an operator to make the information contained in an NOPC accessible at the airports of departure and arrival, but require the actual written NOPC for all other purposes specified in the proposed § 175.33(c). UPS went on to request that RSPA should specify what information contained in the NOPC must be retained.

FedEx stated that the information currently required is redundant, confusing and in some cases encumbers the very process it was intended to support and improve. Fed Ex urged RSPA to consider using a summary of the total hazardous materials by hazard class on board the aircraft in lieu of the current and proposed NOPC. British Airways stated that we should not require NOPCs to be stored at the principal place of business. The commenter went on to say that they retain their NOPCs at each of its stations and that no safety benefit would result from requiring that notification be transferred to a central repository.

The majority of commenters objected to the proposed one year retention period. Three commenters (UPS, ALPA and IPA) supported a 90-day retention period, two commenters (FedEx and ATA) a 30-day period, while another (Emery) favored a retention period in the 30–90 day range. ATA conceded that in the event of an incident the NOPC should be retained for 90 days. Two commenters (IPA and ALPA) who favor a 90-day period pointed out that this is consistent with the current requirements to retain shipping papers for 90 days in 49 CFR 175 as well as in the ICAO Technical Instructions. Other commenters (ATA, Emery) stated that requiring an aircraft operator to retain the NOPC for one year has no bearing on the ability of first responders to react to an accident.

Several commenters objected to the proposal to require retention of the NOPC at the operators' principal place of business. Three commenters (ATA, UPS and FedEx) commented that RSPA should allow the aircraft operator to designate the location. ALPA expressed concern over the requirement to retain a copy of the NOPC (not just the information contained in it) at the operator's principal place of business for one year and stated that the only apparent benefit of retaining a copy of the NOPC at the principal place of business appears to be for enforcement opportunities, and as such, has no place within the context of this rulemaking.

Several commenters (UPS, FedEx, ATA) objected to the proposal to require aircraft operators to make the NOPC available, upon request, to any representative of a Federal, State, or local government agency. The commenters stated RSPA should limit the scope of § 175.33 to a government representative who is either responding to a hazardous material incident or is conducting an investigation which involves a hazardous material, consistent with the requirements in § 172.600(c)(2). Without such limitation, an agency at any level of government could request sensitive information concerning an operator's business, customer base or transportation of hazardous materials. ATA stated that the proposal empowers such a variety of authorities to demand and receive NOPC information that unmanageable circumstances might arise. The ATA urged RSPA to restrict access of this information, in an emergency, to an incident commander or other duly empowered representative of an agency.

In 1994, Congress amended the Federal hazardous material transportation law (Federal hazmat law) to require that, after a hazardous material ''is no longer in transportation,'' each offeror and carrier of a hazardous material must retain the shipping paper ''or an electronic image thereof for a period of one year to be accessible through their respective principal places of business.'' 49 U.S.C. 5110(e), added by Pub. L. 103–311, Title I, § 115, 108 Stat. 1678 (Aug. 26, 1994). That section also provides that the offeror and carrier ''shall, upon request, make the shipping paper available to a Federal, State, or local government agency at reasonable times and locations.'' On July 12, 2002, RSPA issued a final rule under Docket HM–207B amending the HMR to conform with § 5110(e) (67 FR 46124). As stated in the NPRM, the NOPC provides the same information to emergency response personnel as the shipping paper for transportation by rail or public highway. RSPA believes, therefore, that it is consistent with the statutory intent of Congress to require aircraft operators to maintain a copy of the NOPC, or the information contained in it for a reasonable period of time. RSPA does agree, however, with those commenters indicating that 90 days is a sufficient period of time for the NOPC to be maintained; operators should be allowed the option of maintaining the information in the NOPC and not just a copy of the NOPC itself; and, the NOPC should be allowed to be stored at their stations (*i.e.*, airport of departure). Therefore, RSPA is amending § 175.33 to require aircraft operators to maintain a copy of the NOPC, or the information contained in it, for 90 days at the airport of departure or principal place of business. The information required to be maintained is the information required on the NOPC as specified in § 175.33(a), including confirmation that no damage or leaking packages have been loaded on the aircraft. However, information on the NOPC that is pertaining to non-hazardous material is not required to be maintained. In addition, if the NOPC is also the shipping paper, as provided by § 175.35(b), a copy of the NOPC (*i.e.*, the shipping paper), or an electronic image thereof, must be retained for 375 days.

Consistent with changes to the shipping paper retention requirements published under the response to appeals to Docket HM–207B (July 12, 2002; 67 FR 46123) and comments received to the NPRM issued under Docket HM–206C, RSPA is also modifying proposed § 175.33(c). Except when requests are from government representatives responding to an incident, RSPA is not requiring that the NOPC be provided ''immediately'' to an authorized official of a Federal, State, or local government agency. RSPA has revised § 175.33 to require that the information be provided ''at reasonable times and locations.'' Because of the appeals received in response to Docket HM–207B, RSPA also reevaluated the terminology of ''immediately available'' with regard to providing the NOPC, or the information contained therein, to government personnel responding to an incident. RSPA believes that government personnel, such as emergency response personnel, that are responding to an incident involving an aircraft must receive information regarding the hazardous materials aboard the aircraft in such a time and manner that will allow them to take appropriate emergency response actions. RSPA believes that, for the time being, the term ''immediately available'' best describes this need. The term is intended to indicate that the information must be provided to an emergency responder with no undue delay. Though a few minutes may elapse between the request and the information being transmitted, the NOPC information must be transmitted to the responder as quickly as possible. By providing this information in as quick, legible and consolidated fashion as possible emergency response personnel may be able to take adequate action to minimize loss of the content within the aircraft versus losing the aircraft and its contents in its entirety. RSPA may propose in a future rulemaking an alternative phrase for ''immediately available'' in order to define how quickly an aircraft operator must provide this information to government personnel responding to an aviation incident.

The revisions contained in this final rule are consistent with the changes recently adopted into the ICAO Technical Instructions, with one exception. Our amendments require an aircraft operator to provide a phone number for where a copy of the NOPC can be obtained. The ICAO Technical Instructions do not contain this requirement.

## III. Rulemaking Analyses and Notices

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to formal review by the Office of Management and Budget (OMB). This final rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the docket.

### *B. Executive Order 13132*

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts State, local, and Indian tribe requirements, but does not adopt any regulation with 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. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on certain subjects. These subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses subject item (3) above and preempts State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that, if RSPA issues a regulation concerning any of the subjects, RSPA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of preemption is 90 days from publication of this final rule in the **Federal Register**.

*C. Executive Order 13175*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act. However, if an agency determines a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides the head of the agency may so certify, and an RFA is not required.

The Small Business Administration criterion specifies an air carrier is ''small'' if it has 1,500 or fewer employees. For this rule, small entities are part 121 and part 135 air carriers, approved to carry hazardous materials, with 1,500 or fewer employees. We identified 729 air carriers meeting this standard.

As mentioned in the Paperwork Reduction Act section of this preamble, it is estimated that the cost to the airline industry of this final rule will be $450,000 per year. This estimate comes from an examination of the data in the U.S. Department of Transportation's Air Carrier Traffic Statistic Monthly. From that data we also were able to estimate that small business airlines undertake no more than 25% of all aircraft departures, and thus 25% of the total cost. The average small business is expected to incur a cost of no more than $150 per year. Therefore, I certify this final rule does not have a significant economic impact on a substantial number of small entities.

*E. Unfunded Mandates Reform Act of 1995*

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

*F. Paperwork Reduction Act*

This rule results in an increase in the annual paperwork burden and costs. We currently have an approved information collection under OMB No. 2137–0034, ''Hazardous Materials Shipping Papers & Emergency Response Information''. These revisions regarding the maintenance of copies of notification of pilot-in-command were submitted under the NPRM to OMB for review and approval.

Section 1320.8(d), Title 5, Code of Federal Regulations required that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. The NPRM identified a new information collection requirement that RSPA submitted to OMB for approval. RSPA estimated that the new total information collection and recordkeeping burden for OMB No. 2137–034 would be as follows:

''Hazardous Materials Shipping Papers & Emergency Response Information'' OMB No. 2137–0034

*Total Annual Number of Respondents:* 250,000.

*Total Annual Responses:* 260,000,000.

*Total Annual Burden Hours:* 6,523,611.

*Total Annual Burden Cost:* $6,925,000.

RSPA specifically requested comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements. We received three comments regarding this information collection. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. OMB approved the revised information collection requirement on February 27, 2003.

*G. Environmental Assessment*

This final rule will improve emergency response to hazardous materials incidents involving aircraft by ensuring information on the hazardous materials involved in an emergency is readily available. By improving emergency response to aircraft incidents, this should help lessen environmental damage associated with such incidents. We find there are no significant environmental impacts associated with this rule.

*H. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

**List of Subjects**

*49 CFR Part 171*

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

*49 CFR Part 175*

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

## PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.14, paragraph (f) is added to read as follows:

### § 171.14 Transitional provisions for implementing certain requirements.

* * * * *

(f) 49 CFR 175.33 sets out requirements regarding the availability of information for hazardous materials transported by aircraft. Until October 1, 2004, a person may elect to comply with either the applicable requirements of 49 CFR 175.33 in effect on September 30, 2003, and contained in 49 CFR Part 175 revised as of October 1, 2002, or the requirements of that section contained in 49 CFR Part 175 revised as of October 1, 2003. On October 1,2004, all applicable regulatory requirements in 49

CFR 175.33 in effect on October 1, 2003 must be met.

## PART 175—CARRIAGE BY AIRCRAFT

3. The authority citation for part 175 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. In § 175.33, paragraph (a)(1) introductory text is revised, paragraphs (a)(7) and (a)(8) are redesignated as paragraphs (a)(9) and (a)(10), respectively, and new paragraphs (a)(7), (a)(8), (c) and (d) are added to read as follows:

**§ 175.33 Notification of pilot-in-command.**

(a) * * *

(1) The proper shipping name, hazard class, and identification number of the material, including any remaining aboard from prior stops, as specified in § 172.101 of this subchapter or the ICAO Technical Instructions. In the case of Class 1 materials, the compatibility group letter also must be shown. If a hazardous material is described by the proper shipping name, hazard class, and identification number appearing in:

* * * * *

(7) The date of the flight;

(8) The telephone number of a person not aboard the aircraft from whom the information contained in the notification of pilot-in-command can be obtained. The aircraft operator must ensure the telephone number is monitored at all times the aircraft is in flight. The telephone number is not required to be placed on the notification of pilot-in-command if the phone number is in a location in the cockpit available and known to the flight crew.

* * * * *

(c) The aircraft operator must retain at the airport of departure or the operator's principal place of business a copy of each notification of pilot-in-command, an electronic image thereof, or the information contained therein for 90 days. Except as provided in paragraph (d) of this section, the aircraft operator must make this information available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations.

(d) The aircraft operator must have the information required to be retained under paragraph (c) of this section readily accessible at the airport of departure and the intended airport of arrival for the duration of the flight leg and, upon request, must make the information immediately available, in an accurate and legible format, to any representative of a Federal, State, or local government agency (including an emergency responder) who is responding to an incident involving the flight.

Issued in Washington, DC on March 20, 2003 under the authority delegated in 49 CFR part 1.

**Ellen G. Engleman,**

*Administrator.*

[FR Doc. 03–7070 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 020409080–3061–08; I.D. 031003C]**

**RIN 0648–AP78**

## Fisheries of the Northeastern United States; Northeast Multispecies Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Final rule; amendment to an interim final rule.

**SUMMARY:** NMFS announces a correction to the August 1, 2002, interim final rule implementing restrictions specified in the Settlement Agreement Among Certain Parties (Settlement Agreement), which was ordered to be implemented by the U.S. District Court for the District of Columbia (Court) in a Remedial Order (Order) issued on May 23, 2002. The Interim Final Rule contained an inadvertent error in the coordinates defining the seasonal Gulf of Maine (GOM) Rolling Closure Area II under the Northeast (NE) Multispecies Fishery Management Plan (FMP). The intent of this action is to correct the inadvertent error to the GOM Rolling Closure Area II coordinates. This action is being taken by NMFS under the authority of section 305(c) and (d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective March 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Douglas W. Christel, Fishery Management Specialist, 978–281–9141.

**SUPPLEMENTARY INFORMATION:**

### Background

Regulations implementing the seasonal (April) GOM Rolling Closure Area II were published on May 5, 1999 (64 FR 24066), as part of the final rule implementing regulations in Framework Adjustment 27 of the NE Multispecies FMP. Since that time, no formal adjustments to this area have been approved by NMFS.

On May 23, 2002, the Court issued an Order in the case of *Conservation Law Foundation, et al.* v. *Evans et al.* (Case No. 001134 GK)(D.D.C. May 23, 2002) that the Settlement Agreement be implemented according to its terms to reduce overfishing, until the implementation of Amendment 13 to the FMP.

On August 1, 2002, NMFS published an interim final rule implementing the additional restrictions specified in the Settlement Agreement. These restrictions were intended to reduce overfishing and bycatch on species managed under the FMP, under the authority of section 305(c) of the Magnuson-Stevens Act. The August 1, 2002, interim final rule contained an inadvertent error in the coordinates defining the GOM Rolling Closure Area II at § 648.81(g)(1)(ii). The final two coordinate points for the GOM Rolling Closure Area II were erroneously defined as GM6, at 42°30' N. lat. and 68°30' W. long.; and GM9, at 42°30' N. lat. and the intersection with the Massachusetts shoreline. The correct coordinate points are GM13, at 43°00' N. lat. and 68°30' W. long.; and GM10, at 43°00' N. lat. and the intersection with the New Hampshire shoreline.

The text of the Settlement Agreement, as well as the preamble to the August 1, 2002, interim final rule, stated that all measures that were in effect prior to May 1, 2002, and that were not amended by the August 1, 2002, interim final rule, would remain in effect. The Settlement Agreement identified several measures to be undertaken to reduce fishing mortality in the NE multispecies fishery, including additional inshore closure areas during the months of May and June. However, the Settlement Agreement did not specify any changes to the April closure area as defined in Framework Adjustment 27 to the FMP. Accordingly, the August 1, 2002, interim final rule only specified that changes were made to the GOM Rolling Closure Areas III and IV, for the months of May and June, respectively. The inadvertent error regarding the GOM Rolling Closure Area II occurred in the drafting of the section of the proposed rule to implement the changes to Areas III and IV. In the proposed rule, the subparagraph relating to Area II was included merely to provide the full context of the changes to Areas III and IV. In the process of including the Area II subparagraph, the incorrect coordinates were inadvertently specified.

Accordingly, this rule amends the interim final rule by correcting the erroneous coordinate points by replacing points GM6 and GM9 with points GM13 and GM10. Advisory letters that were sent to current NE multispecies permit holders explaining the changes to the regulations based upon the August 1, 2002, interim final rule included a map that correctly depicted the GOM Rolling Closure Area II.

**Classification**

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause to waive the requirement to provide prior notice and the opportunity for public comment on this amendment to an interim final rule to correct the coordinates defining the GOM Rolling Closure Area II as published in the August 1, 2002, interim final rule, pursuant to authority set forth at 5 U.S.C. 553(b)(B), because such procedures would be impracticable and contrary to the public interest. This action is necessary to protect groundfish, in particular, GOM cod, during the April season within the GOM Rolling Closure Area II, as initially intended in Framework Adjustment 27.

NMFS is required pursuant to a Settlement Agreement that was subsequently ordered to be implemented by the U.S. District Court for the District of Columbia to ensure that certain status quo measures are implemented through the August 1, 2002, interim final rule. Rolling Closure Area II is one of the status quo measures reflected in the Settlement Agreement and is expected to take effect on April 1, 2003. Because NMFS must adhere to the Settlement Agreement, it is impracticable for NMFS to provide prior notice and opportunity for public comment.

In addition, it would be contrary to the public interest to provide prior notice and opportunity for public comment because the Rolling Closure Areas serve to provide protection to a number of groundfish stocks. This closure area (i.e. Rolling Closure Area II) was originally established to protect groundfish stocks based upon the results of the 27th Annual Stock Assessment Workshop (SAW 27) of 1998. SAW 27 indicated that the GOM cod stock was collapsing. The report specified that GOM cod were overexploited, that recruitment continued to remain at record low levels, and that spawning stock biomass was projected to decline to the lowest level ever observed. Due to the critical condition of GOM cod, the New England Fishery Management Council (Council) voted to adopt management measures in Framework Adjustment 27 to reduce fishing mortality in order to prevent overfishing. Based on analyses in Framework Adjustment 27, the measures in that framework, including area closures, would meet the conservative mortality reduction needed for groundfish species. Framework Adjustment 27 was published on May 5, 1999. Rolling Closure Area II which is scheduled to take effect on April 1, 2003, serves to insure the conservation of vulnerable and depleted GOM cod stocks by reducing fishing mortality in specific inshore areas and during specific time periods considered important to the rebuilding of the species.

Moreover, the management measures contained in this amendment to an interim final rule received prior notice and public comment through the Council's framework process and the publication of a proposed rule for Framework Adjustment 27 on March 29, 1999. NMFS responded to these comments in the final rule published on May 5, 1999. Additionally, NMFS did not receive any comments on the Rolling Closure Areas in the August 1, 2002, Interim Final Rule.

Because this final rule must be made effective by April 1, 2003, consistent with the Settlement Agreement and, because of the need to maintain the conservation potential of this closure area, the AA finds good cause to waive the 30–day delay in effective date under 5 U.S.C. 553(d)(3).

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The analytical requirements of the Regulatory Flexibility Act do not apply because this rule is not subject to prior notice and opportunity for public comment.

**List of Subjects in 50 CFR part 648**

Fisheries, Fishing, Reporting and recordkeeping.

Dated: March 19, 2003.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.81, paragraph (g)(1)(ii) is revised to read as follows:

**§ 648.81 Closed areas.**

* * * * *

(g) * * *

(1) * * *

(ii) *Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA II

[April 1–April 30]

| Point | N. Lat. | W. Long. |
|---|---|---|
| GM1 | 42°00' | (1) |
| GM2 | 42°00' | (2) |
| GM3 | 42°00' | (3) |
| GM5 | 42°00' | 68°30' |
| GM13 | 43°00' | 68°30' |
| GM10 | 43°00' | (4) |

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.
4 New Hampshire shoreline.

* * * * *

[FR Doc. 03–7062 Filed 3–20–03; 4:09 pm]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 68, No. 57
Tuesday, March 25, 2003

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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 20

**RIN 3150–AH07**

### Radiation Exposure Reports: Labeling Personal Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing an amendment to its filing requirements for written event reports submitted to the NRC concerning individuals occupationally overexposed to radiation and radioactive materials. Licensees will be required to clearly label any section of the event report containing personal information ''Privacy Act Information: Not for Public Disclosure.'' This action is necessary to ensure that personal information filed with the NRC is segregated from the event report and maintained in a separate, non-public document.

**DATES:** Comments on the proposed rule must be received on or before April 24, 2003.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* You may also provide comments via this Web site by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Merri Horn, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–8126, e-mail *mlh1@nrc.gov.*

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

### Procedural Background

Because the NRC considers this action to be noncontroversial, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on June 9, 2003. However, if the NRC receives significant adverse comments on this proposed rule by April 24, 2003, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

### List of Subjects in 10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR part 20.

## PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

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

**Authority:** Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. In § 20.2203, paragraph (b)(2) is revised to read as follows:

**§ 20.2203 Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits.**

* * * * *

(b) * * *

(2) Each report filed pursuant to paragraph (a) of this section must include for each occupationally overexposed [1] individual: the name, Social Security account number, and date of birth. The report must be prepared so that this information is stated in a separate and detachable part of the report and must be clearly labeled ''Privacy Act Information: Not for Public Disclosure''.

* * * * *

Dated at Rockville, Maryland, this 11th day of March, 2003.

For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 03–7031 Filed 3–24–03; 8:45 am]

BILLING CODE 7590–01–P

[1] With respect to the limit for the embryo/fetus (§ 20.1208), the identifiers should be those of the declared pregnant woman.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 89–ANE–10–AD]**

## Airworthiness Directives; Textron Lycoming, Direct-Drive Reciprocating Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), applicable to Textron Lycoming, direct-drive reciprocating engines (except O–145, O–320H, O–360E, LO–360E, LTO–360E, O–435, and TIO–541 series engines). That AD currently requires inspection of the crankshaft gear installation and rework or replacement of the gears where necessary after a propeller strike, sudden stoppage, at overhaul, or whenever gear train repair is required. This proposal would revise the definitions for sudden stoppage and propeller strike. This proposal is prompted by a change to the definition of a propeller strike or sudden stoppage. The actions specified in the proposed AD are intended to prevent loosening or failure of the crankshaft gear retaining bolt, which may cause sudden engine failure.

**DATES:** Comments must be received by May 27, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 89–ANE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov.* Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Textron Lycoming, 652 Oliver Street, Williamsport, PA 17701, U.S.A. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth Street, 3rd floor, Valley Stream, NY 11581–1200; telephone (516) 256–7537; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 89–ANE–10–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 89–ANE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

### Discussion

On July 12, 1991, the FAA issued AD 91–14–22, Amendment 39–6916 (56 FR 33205, July 19, 1991), to require inspection of the crankshaft gear installation and rework or replacement of the gears where necessary during overhaul, after a propeller strike, sudden stoppage, or whenever gear train repair is required. That action was prompted by reports of loosening and disengagement of the gear retaining bolt which could result in loss of the main camshaft drive train and critical engine accessories. That condition, if not corrected, could result in loosening or failure of the crankshaft gear retaining bolt, which may cause sudden engine failure.

Since AD 91–14–22 was issued, Textron Lycoming has issued mandatory Service Bulletin (SB) No. 475C, dated January 30, 2003, and the definition of a propeller strike has been expanded to include:

- Any incident, whether or not the engine is operating, that requires repair to the propeller beyond minor dressing of the blades.
- A sudden drop in engine revolutions per minute (RPM) while impacting water, tall grass, or similar yielding medium where propeller damage is not normally incurred.

Textron Lycoming has also included instructions in the maintenance manuals for inspections at overhaul and whenever repair of the gear train is required.

### Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Textron Lycoming Mandatory Service Bulletin (MSB) No. 475C, dated January 30, 2003, that describes procedures for inspection and repair of the crankshaft and gear assembly.

### FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Textron Lycoming

direct-drive reciprocating engines of this same type design, the proposed AD would supersede AD 91–14–22 to revise the definitions of a propeller strike and sudden engine stoppage. The actions must be done in accordance with the service information described previously.

**Economic Analysis**

There are approximately 175,000 Textron Lycoming, direct-drive reciprocating engines of the affected design in the worldwide fleet. The FAA estimates that 125,000 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 7 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $420 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $52,500,000.

**Regulatory Analysis**

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–6916 (56 FR 33205, July 19, 1991), and by adding a new airworthiness directive, to read as follows:

**Textron Lycoming:** Docket No. 89–ANE–10–AD. Supersedes AD 91–14–22, Amendment 39–6916.

*Applicability:* This airworthiness directive (AD) is applicable to all Textron Lycoming direct-drive reciprocating engines except O–145, O–320H, O–360E, LO–360E, LTO–360E, TO–360E, O–435, and TIO–541 series engines.

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

*Compliance:* Compliance with this AD is required as indicated before further flight if the engine has experienced a propeller strike as defined in paragraph (b) of this AD, unless already done.

To prevent loosening or failure of the crankshaft gear retaining bolt, which may cause sudden engine failure, do the following:

(a) Inspect, and if necessary repair, the crankshaft counterbored recess, the alignment dowel, the retaining bolt and lock plate, the bolt hole threads, and the crankshaft gear for wear, galling, corrosion, and fretting in accordance with steps 1 through 7 of Textron Lycoming Mandatory Service Bulletin No. 475C, dated January 30, 2003.

**Definition of Propeller Strike**

(b) For the purposes of this AD, a propeller strike is defined as follows:

(1) Any incident, whether or not the engine is operating, that requires repair to the propeller other than minor dressing of the blades.

(2) Any incident during engine operation in which the propeller impacts a solid object that causes a drop in revolutions per minute (RPM) and also requires structural repair of the propeller (incidents requiring only paint touch-up are not included). This is not restricted to propeller strikes against the ground.

(3) A sudden RPM drop while impacting water, tall grass, or similar yielding medium, where propeller damage is not normally incurred.

(c) The preceding definitions include situations where an aircraft is stationary and the landing gear collapses causing one or more blades to be substantially bent, or where a hanger door (or other object) strikes the propeller blade. These cases should be handled as sudden stoppages because of potentially severe side loading on the crankshaft flange, front bearing, and seal.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (NYACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, NYACO.

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

**Special Flight Permits**

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

Issued in Burlington, Massachusetts, on March 17, 2003.

**Robert G. Mann,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 03–6998 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NE–41–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines. This proposal would require removal and replacement of protective coating of the

7th and 9th through 12th stage high pressure compressor (HPC) disks and the 8th stage HPC hub, initial and repetitive inspections for corrosion pits and cracks, and removal from service as required. This proposal is prompted by reports from operators of cracks observed in JT8D engine steel HPC disks. The actions specified by the proposed AD are intended to prevent fracture of the 7th and 9th through 12th stage HPC disks and 8th stage HPC hub, resulting in uncontained engine failure and damage to the airplane.

**DATES:** Comments must be received by May 27, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–41–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–41–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–41–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

## Discussion

The FAA has received reports of cracks observed in steel HPC disks on PW JT8D–209, –217, –217A, –217C, and –219 series turbofan engines. Investigation has revealed that four of these disks cracked as the result of corrosion pits originating in the disk dovetail slots and one disk cracked as the result of corrosion pits in the tierod hole area.

## Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of PW alert service bulletin (ASB) A6435, Revision 1, dated March 7, 2003, that describes procedures for initial and repetitive inspections to detect corrosion and cracks in 7th and 9th through 12th stage HPC disks and 8th stage HPC hubs, and removal from service of those HPC disks and hubs corroded beyond serviceable limits or cracked.

## FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Pratt & Whitney JT8D–200 series turbofan engines of the same type design, the proposed AD would require removal and replacement of protective coating of the 7th and 9th through 12th stage high pressure compressor (HPC) disks and the 8th stage HPC hub, initial and repetitive inspections for corrosion pits and cracks, and removal from service as required. The actions would be required to be done in accordance with the alert service bulletin described previously.

## Economic Analysis

There are approximately 2,200 JT8D–200 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 1,470 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 96 work hours per engine to perform the proposed actions, and that the average labor rate is $60 per work hour. The FAA estimates that 60% of the inspected disks will require replacement at a prorated cost $29,090 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $51,229,500.

## Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Pratt & Whitney:** Docket No. 2002–NE–41–AD.

*Applicability:* This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines. These engines are installed on, but not limited to McDonnell Douglas MD–80 and series airplanes.

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

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

To prevent fracture of the 7th and 9th through 12th stage high pressure compressor (HPC) disks and 8th stage HPC hub, resulting in uncontained engine failure and damage to the airplane, do the following:

(a) Perform initial and repetitive inspections of 7th and 9th through 12th stage HPC disks and 8th stage HPC hubs for corrosion pits and cracks after stripping the protective coating in accordance with the intervals specified in the compliance section and procedures specified in the accomplishment instructions of PW alert service bulletin (ASB) A6435, Revision 1, dated March 7, 2003.

(b) Before further flight, replace 7th and 9th through 12th stage HPC disks and 8th stage HPC hubs found with corrosion pits or cracks beyond serviceable limits as defined by PW ASB A6435, Revision 1, dated March 7, 2003.

(c) For the purposes of this AD, use the effective date of this AD for computing compliance intervals whenever PW ASB A6435, Revision 1, dated March 7, 2003, refers to the release date of the ASB.

**Alternative Methods of Compliance**

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

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

**Special Flight Permits**

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

Issued in Burlington, Massachusetts, on March 18, 2003.

**Robert G. Mann,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 03–6997 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–01–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1124 and 1124A Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Israel Aircraft Industries, Ltd., Model 1124 and 1124A series airplanes. This proposal would require revising the airplane flight manual to advise the flightcrew to don oxygen masks as a first and immediate step following a cabin altitude alert. This action is necessary to prevent incapacitation of the flightcrew due to lack of oxygen. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by April 24, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–01–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–nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–01–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from 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.

**FOR FURTHER INFORMATION CONTACT:** Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following

statement is made: ''Comments to Docket Number 2003–NM–01–AD.'' The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–01–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

On October 25, 1999, a Learjet Model 35 series airplane operating under 14 CFR 135 departed Orlando International Airport *en route* to Dallas, Texas. Air traffic control lost communication with the airplane near Gainesville, Florida. Air Force and National Guard airplanes intercepted the airplane, but the flightcrews of the chase airplanes reported that the windows of the Model 35 series airplane were apparently frosted over, which prevented the flightcrews of the chase airplanes from observing the interior of the Model 35 series airplane. The flightcrews of the chase airplanes reported that they did not observe any damage to the airplane. Subsequently, the Model 35 series airplane ran out of fuel and crashed in South Dakota. To date, causal factors of the accident have not been determined. However, lack of the Learjet flightcrew's response to air traffic control poses the possibility of flightcrew incapacitation and raises concerns with the pressurization and oxygen systems.

Recognizing these concerns, the FAA initiated a special certification review (SCR) to determine if pressurization and oxygen systems on Model 35 series airplanes were certificated properly, and to determine if any unsafe design features exist in the pressurization and oxygen systems.

The SCR team found that there have been several accidents and incidents that may have involved incapacitation of the flightcrews during flight. In one case, the airplane flightcrew did not activate the pressurization system or don their oxygen masks and the airplane flew in excess of 35,000 feet altitude. In another case, the airplane flightcrews did not don their oxygen masks when the cabin altitude aural warning was activated. Further review by the SCR team indicates that the Airplane Flight Manual (AFM) of Learjet Model 35/36 series airplanes does not have an emergency procedure that requires donning the flightcrew oxygen masks when the cabin altitude aural warning is activated. Additional review has found that the AFMs of Model 35A and 36A series airplanes also do not contain appropriate flightcrew actions when the cabin altitude aural warning is activated. However, the AFMs do contain an abnormal procedure that allows the flightcrew to troubleshoot the pressurization system prior to donning the oxygen masks after the cabin altitude warning sounds. Troubleshooting may delay donning of the oxygen masks to the point that flightcrews may become incapable of donning their oxygen masks.

The SCR findings indicated that the most likely cause for incapacitation was hypoxia (lack of oxygen). The only other plausible cause of incapacitation is exposure to toxic substances. However, no evidence was found to support the existence of toxic substances.

Delayed response of the flightcrew in donning oxygen masks as a first and immediate action upon the activation of the cabin altitude warning horn could lead to incapacitation of the flightcrew.

A review of the emergency procedures in the AFM for Model 1124 and 1124A series airplanes revealed that the procedures for the flightcrew to don emergency oxygen masks is not the first and immediate step, but rather the second step when the warning horn sounds. Time spent troubleshooting the pressurization system following a cabin altitude alert may result in the flightcrew's incapacitation and consequent inability to continue to control the airplane before they are able to don oxygen masks. Therefore, these airplanes may be subject to the identified unsafe condition.

**Explanation of Relevant Service Information**

Israel Aircraft Industries has issued Temporary Revision (TR) No. 3 to the 1124 Westwind Airplane Flight Manual (AFM) and TR No. 5 to the 1124A Westwind AFM. Both TRs are dated January 16, 2001. The TRs advise the flightcrew to don oxygen masks as a first and immediate step following a cabin altitude alert to prevent incapacitation of the flightcrew due to lack of oxygen. (Previously the AFMs advised the flightcrew to check the cabin altitude and differential pressure gauge before donning oxygen masks.) Accomplishment of the AFM revision is intended to adequately address the identified unsafe condition. The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, approved these TRs and issued Israeli airworthiness directive 21–02–07–01, dated July 22, 2002, which mandates compliance with the TRs to ensure 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 Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require an AFM revision to advise the flightcrew to don oxygen masks as a first and immediate step following a cabin altitude alert.

**Cost Impact**

The FAA estimates that 198 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $11,880, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

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

would not have federalism implications under Executive Order 13132.

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Israel Aircraft Industries, LTD.:** Docket 2003–NM–01–AD.

*Applicability:* All Model 1124 and 1124A series airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew due to lack of oxygen, accomplish the following:

**Revision to Airplane Flight Manual (AFM)**

(a) Within 1 month after the effective date of this AD, revise the Emergency Procedures section of the FAA-approved AFM, as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model 1124 series airplanes: Insert TR 3, dated January 16, 2001, into the 1124 Westwind AFM.

(2) For Model 1124A series airplanes: Insert TR 5, dated January 16, 2001, into the 1124A Westwind AFM.

(b) When the information in the TRs identified in paragraph (a) of this AD has been incorporated into the general revisions of the respective AFM, the general revisions may be incorporated into the AFMs, and these TRs may be removed from the AFM.

**Alternative Methods of Compliance**

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

**Note 1:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

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

**Note 2:** The subject of this AD is addressed in Israeli airworthiness directive 21–02–07–01, dated July 22, 2002.

Issued in Renton, Washington, on March 18, 2003.

**Michael J. Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–6996 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NE–16–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce plc. RB211–535 Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), applicable to Rolls-Royce plc. (RR) models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, with certain part number (P/N) low pressure (LP) turbine stage 2 discs installed. That AD currently requires establishing new reduced LP turbine stage 2 disc cyclic limits. That AD also requires removing from service affected discs that already exceed the new reduced cyclic limit, and removing other affected discs before exceeding their cyclic limits, using a drawdown schedule. This proposal would require changing certain cyclic limits, changing the effective date of certain disc cyclic lives, and would allow intermix of Flight Plan A and Flight Plan B intermix calculations. This proposal is prompted by a reassessment of the thermal and stress data from recent operational experience and comments received from operators on the current AD. The actions specified by the proposed AD are intended to prevent LP turbine stage 2 disc failure, which could result in uncontained engine failure and possible loss of the airplane.

**DATES:** Comments must be received by May 27, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–16–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected, by appointment, at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov.* Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Rolls-Royce plc, P.O. Box 31 Derby, DE24 8BJ, United Kingdom; telephone 011–44–1332–242424; fax 011–44–1332–249936. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–16–AD.'' The postcard will be date stamped and returned to the commenter.

**Availability of NPRM's**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–16–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

**Discussion**

On November 8, 2002, the FAA issued AD 2002–23–08, Amendment 39–12952 (67 FR 71094, November 29, 2002), to require establishing new reduced LP turbine stage 2 disc cyclic limits, to require removing from service affected discs that already exceed the new reduced cyclic limit, and to remove other affected discs before exceeding their cyclic limits, using a drawdown schedule. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), had notified the FAA that an unsafe condition may exist on RR models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines. The CAA advised that the manufacturer had performed a reassessment of the safe cyclic limits of LP turbine stage 2 discs, P/Ns UL11508, UL17141, UL18947, UL29029, and UL37352. The cyclic limits of these discs were reduced based on more recent thermal and stress data obtained from operational experience. This condition, if not corrected, could result in uncontained engine failure and possible loss of the airplane.

Since AD 2002–23–08 was issued, another reassessment of the thermal and stress data obtained through operational experience was made, and comments were received from operators on the current AD.

**Comments**

Interested persons have been afforded an opportunity to comment on final rule; request for comments AD 2002–23–08. Due consideration has been given to the comments received.

**Request To Change Table 1 Life Limit**

Two commenters request that the Flight Plan A life limit for item (1) December 31, 2001, listed in Table 1, be changed from 22,500 cycles-since-new (CSN) to the value of 23,200 CSN. The commenters state that the 22,500 CSN value does not agree with the corresponding table value in mandatory service bulletin (MSB) RB.211–72–D181, Revision 3, dated August 16, 2002.

The FAA agrees. We have changed item (1) of Table 1 of this proposed rule to 23,200 CSN.

**Request To Change Effective Date of Disc Cyclic Life**

Nine commenters request that the effective date of the disc cyclic life in Table 2 and Table 3 be changed from ''On the effective date of this AD'' to agree with the corresponding table value of ''As of December 31, 2000'' in MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

The FAA agrees. We have changed the first columns of Table 2 and Table 3.

**Request To Change Drawdown Schedule**

Six commenters request the drawdown schedule in the AD be changed to coincide with the schedule in MSB RB.211–72–D181, Revision 3. The commenters have identified differences in various drawdown schedule cyclic limits between the AD and the MSB, and state the AD limits are more restrictive.

The FAA agrees. We have changed this proposed rule to coincide as much as possible with the drawdown schedule in the MSB.

**Request for an Allowance for Flight Plan Intermix**

One commenter states that the AD does not allow for Flight Plan A and Flight Plan B intermix count conditions and that this could result in a lower cyclic limit than required by the MSB.

The FAA agrees. We have incorporated the intermix note from the MSB into this proposed rule.

**Request To Incorporate Four Tables from the MSB Versus the Three Tables in AD**

One commenter states that the drawdown requirements and inspection were provided in four tables in MSB RB.211–72–D181, Revision 3, and that the AD should adopt the same tabular format. The commenter believes this would reduce the potential for confusion among the operators, eliminate contradiction between the MSB and AD, and ensure the original safety issues will be addressed.

The FAA partially agrees. It is unclear which four tables the commenter is referring to since they are not numbered in the MSB. However, in an effort to clarify this information, we have added additional levels of detail to Table 2 and Table 3.

**Manufacturer's Service Information**

Rolls-Royce plc. issued MSB RB.211–72–D181, Revision 3, dated August 16, 2002, that specifies a drawdown schedule for removing from service affected LP turbine stage 2 discs, using new Time Limits Manual (TLM) cyclic limits. This MSB provides a scheduled reduction, by engine and flight plan, of LP turbine stage 2 disc lives until the full life-cycle reduction on December 31, 2005.

This MSB also provides instructions for performing a one-time on-wing eddy current inspection for cracks of affected LP turbine stage 2 discs to allow a disc to remain in service for an additional 3,000 cycles, if it does not exceed the new, lower TLM cyclic limit. The CAA has classified this service bulletin as mandatory and issued AD 006–05–2001 in order to assure the airworthiness of these Rolls-Royce plc. turbofan engines in the U.K.

**Bilateral Agreement Information**

This engine model is manufactured in the U.K. 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 CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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.

**Proposed Requirements of This AD**

Since an unsafe condition has been identified that is likely to exist or develop on other RR models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines of the same type design, the proposed AD would require:

- Reducing the LP turbine stage 2 disc life-cyclic limits; AND

• Removing from service affected discs that already exceed the new reduced cyclic limits; AND

• Removing other affected discs before exceeding their cyclic limits, using a drawdown schedule.

The actions would be required to be done in accordance with the MSB described previously.

**Economic Analysis**

There are approximately 1,253 engines of the affected design in the worldwide fleet. The FAA estimates that 788 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 12 work hours per engine to perform each of the proposed inspections and 300 work hours per engine to perform the proposed disc removals. The average labor rate is $60 per work hour. Required parts would cost approximately $60,190 per engine. Based on these figures, the total cost of the proposed AD for performing one inspection per engine and removing all 788 discs, to U.S. operators is estimated to be $62,181,080.

**Regulatory Analysis**

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–12952 (67 FR 71094, November 29, 2002), and by adding a new airworthiness directive, to read as follows:

**Rolls-Royce plc.:** Docket No. 2002–NE–16–AD. Supersedes AD 2002–23–08, Amendment 39–12952.

*Applicability:* This airworthiness directive (AD) is applicable to Rolls-Royce plc. (RR) models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, with low pressure (LP) turbine stage 2 discs part numbers (P/N's) UL11508, UL17141, UL18947, UL29029, and UL37352 installed. These engines are installed on, but not limited to, Boeing 757 and Tupolev Tu204 airplanes.

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

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

To prevent LP turbine stage 2 disc failure, which could result in an uncontained engine failure and possible loss of the airplane, do the following:

**Cycle Limits**

(a) Change the RR Time Limits Manual cyclic limits for LP turbine stage 2 discs as specified in the following Table 1:

TABLE 1.—TIME LIMITS MANUAL (TLM) CYCLIC LIMITS

| Date of reduced life limit | Life limits for RB211–535E4 engines operating in flight plan A, and RB211–535E4–B engines | Life limits for RB211–535E4 engines operating in flight plan B |
|---|---|---|
| (1) December 31, 2001 | 23,200 cycles-since new (CSN) | 19,700 CSN. |
| (2) December 31, 2002 | 22,500 cycles-since-new (CSN) | 19,000 CSN. |
| (3) December 31, 2003 | 21,500 CSN | 18,000 CSN. |
| (4) December 31, 2004 | 20,000 CSN | 16,500 CSN. |
| (5) December 31, 2005 | 18,100 CSN | 14,600 CSN. |

**RB211–535E4 Engines Operating to Flight Plan A, and RB211–535E4–B Engines**

(b) For RB211–535E4 engines operating to flight plan A, and RB211–535E4–B engines, remove the LP turbine stage 2 disc from service using the CSN and Action times listed in the following Table 2.

TABLE 2.—DRAWDOWN SCHEDULE FOR RB211–535E4 ENGINES OPERATING TO FLIGHT PLAN A AND RB211–535E4–B ENGINES

| Disc CSN | Action | Replace disc | |
|---|---|---|---|
| | | Without eddy current inspection | With eddy current inspection |
| (1) 20,001 CSN or greater on December 31, 2000. | Remove disc from service or perform optional on-wing eddy current disc inspection within 21 days after the effective date of this AD. | Within 21 days after the effective date of this AD. | Within 3,000 cycles-in-service (CIS) after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD. |
| (2) 18,100 to 20,000 CSN on December 31, 2000. | Remove disc from service or perform optional on-wing eddy current disc inspection. | Before accumulating 21,000 CSN or within 21 days after the effective date of this AD, whichever occurs first. | Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD. |
| (3) Fewer than 18,100 CSN on December 31, 2000 and greater than 20,000 CSN on December 31, 2004. | Remove disc from service or perform optional on-wing eddy current disc inspection. | Before accumulating 20,500 CSN or by December 31, 2004, whichever occurs first. | Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD. |
| (4) Fewer than 18,100 CSN on December 31, 2000 and greater than 18,100 CSN on December 31, 2005. | Remove disc from service or perform on-wing eddy current disc inspection. | Before accumulating 20,000 CSN or by December 31, 2005, whichever occurs first. | Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD. |
| (5) Fewer than 18,100 CSN on December 31, 2000 and fewer than 18,100 CSN on December 31, 2005. | No action required ..... | N/A. ..... | N/A |

(c) Information regarding disc removal may be found in 3.A. of the Accomplishment Instructions of Mandatory Service Bulletin (MSB) RB.211–72–D181, Revision 3, dated August 16, 2002.

(d) The optional on-wing eddy current disc inspection noted in Table 2 of this AD must be performed in accordance with 3.C.(1) through 3.C.(6) of the Accomplishment Instructions of MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

**RB211–535E4 Engines Operating to Flight Plan B**

(e) For RB211–535E4 engines operating to flight plan B, remove the LP turbine stage 2 disc from service using the CSN and Action times listed in the following Table 3.

TABLE 3.—DRAWDOWN SCHEDULE FOR RB211–535E4 ENGINES OPERATING TO FLIGHT PLAN B

| Disc CSN | Action | Replace disc | |
|---|---|---|---|
| | | Without eddy current inspection | With eddy current inspection |
| (1) 16,501 CSN or greater on December 31, 2000. | Remove disc from service or perform optional on-wing eddy current disc inspection within 21 days after the effective date of this AD. | Within 21 days after the effective date of this AD. | Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD. |
| (2) Greater than 14,600 CSN on December 31, 2000. | Remove disc from service or perform optional on-wing eddy current disc inspection. | Before accumulating 17,500 CSN or within 21 days after the effective date of this AD, whichever occurs first. | Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD. |
| (3) Fewer than 14,600 CSN on December 31, 2000 and greater than 16,500 CSN on December 31, 2004. | Remove disc from service or perform optional on-wing eddy current disc inspection. | Before accumulating 17,000 CSN or by December 31, 2004, whichever occurs first. | Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD. |
| (4) Fewer than 14,600 CSN on December 31, 2000 and greater than 14,600 CSN on December 31, 2005. | Remove disc from service or perform on-wing eddy current disc inspection. | Before accumulating 16,500 CSN or by December 31, 2005, whichever occurs first. | Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD. |
| (5) Fewer than 14,600 CSN on December 31, 2000 and fewer than 14,600 CSN on December 31, 2005. | No action required ..... | NA ..... | NA. |

(f) Information regarding disc removal may be found in 3.A. of the Accomplishment Instructions of MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

(g) The optional on-wing eddy current disc inspection must be performed in accordance with 3.C.(1) through 3.C.(6) of the Accomplishment Instructions of MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

**Note 2:** For engines moving from Flight Plans A to B or B to A, the intermix calculations found in MSB RB.211–72–D181, Revision 3, dated August 16, 2002, may be applied to the life limits.

**Alternative Methods of Compliance**

(h) 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, ECO. Operators must submit their request through an appropriate FAA Principal Maintenance

Inspector, who may add comments and then send it to the Manager, ECO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office (ECO).

**Special Flight Permits**

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

**Note 4:** The subject of this AD is addressed in CAA airworthiness directive 006–05–2001, dated August 3, 2001.

Issued in Burlington, Massachusetts, on March 19, 2003.

**Peter A. White,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 03–7004 Filed 3–24–03; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2003–14658; Airspace Docket No. 03–ACE–27]**

## Proposed modification of Class E airspace; Fort Leonard Wood, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify Class E airspace areas at Fort Leonard, MO. An examination of controlled airspace at Fort Leonard, MO revealed discrepancies in the dimensions of the Fort Leonard, MC Class E4 and Class E5 airspace areas. This action corrects the discrepancies by modifying the airspace areas.

The intended effect of this proposal is to provide controlled Class E airspace for aircraft executing instrument approach procedures to Waynesville Regional Airport at Forney Field and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

**DATES:** Comments for inclusion in the Rules Docket must be received on or before April 25, 2003.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14658/Airspace Docket No. 03–ACE–27, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

**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:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented that particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14658/Airspace Docket No. 03–ACE–27.'' The postcard will be date/time stamped and returned to the commenter.

### Availability of NPRM's

An electric copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov.* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independent Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

This notice proposes to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying the Class E airspace area designated as an extension to the Class D airspace and the Class E airspace area extending upward from 700 feet or more above the surface at Fort Leonard Wood, MO. An examination of controlled airspace at Fort Leonard, MO revealed the dimensions of these airspace areas were not in compliance with FAA Order 8260.19, Flight Procedures and Airspace. This proposed rule making would decrease the size of the Fort Leonard Wood, MO Class E airspace area designated as an extension to the Class D airspace by relocating the southeastern boundary of this area from 16 miles to 7 miles southeast of the Buckhorn Nondirectional Radio Beacon (NDB). It would also increase the dimensions of the Class E airspace area extending upward from 700 feet or more above the surface to approximately the current dimensions of the Class E airspace area designated as an extension to the Class D airspace. These actions would correct the discrepancies in the controlled airspace at Fort Leonard Wood, MO and bring them into compliance with FAA Order 8260.19. These areas would be depicted on appropriate aeronautical charts.

Class E airspace areas designated as an extension to a Class D area are published in Paragraph 6004 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant

preparation of a Regulatory Evaluation as they anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

*Paragraph 6004 Class E airspace areas designated as an extension to Class D or Class E surface area.*

* * * * *

**ACE MO E4 Fort Leonard Wood, MO**

Waynesville Regional Airport at Forney Field, MO
(Lat. 37°44′30″ N., long. 92°08′27″ W.)
Forney VOR
(Lat. 37°44′33″ N., long. 92°08′20″ W.)
Buckhorn NDB
(Lat. 37°41′51″ N., long. 92°06′14″ W.)

That airspace extending upward from the surface within 2.4 miles each side of the Forney VOR 318° radial extending from the 4-mile radius of Waynesville Regional Airport at Forney field to 7 miles northwest of the VOR and within 4 miles southwest and 8 miles northeast of the 147° bearing from the Buckhorn NDB extending from the 4-mile radius of the airport to 7 miles southeast of the Buckhorn NBD, excluding that airspace within the R–4501 Fort Leonard Wood Restricted Areas, during the specific times they are in effect. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

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

* * * * *

**ACE MO E5 Fort Leonard Wood, MO**

Waynesville Regional Airport at Forney Field, MO
(Lat. 37°44′30″ N., long. 92°08′27″ W.)
Forney VOR
(Lat. 37°44′33″ N., long. 92°08′20″ W.)
Buckhorn NDB
(Lat. 37°41′51″ N., long. 92°06′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Waynesville Regional Airport at Forney Field and within 2.4 miles each side of the Forney VOR 318° radial extending from the 6.5-mile radius of the airport to 7 miles northwest of the VOR and within 4 miles southwest and 8 miles northeast of the 147° bearing from the Buckhorn NDB extending from the 6.5-mile radius of the airport to 16 miles southeast of the Buckhorn NDB; excluding that airspace within the R–4501 Fort Leonard Wood, MO, Restricted Areas during the specific times they are in effect.

* * * * *

Issued in Kansas City, MO, on March 11, 2003.

**Paul J. Sheridan,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 03–7073 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 111

**[Docket No. 95N–0304]**

**RIN 0910–AC51**

### Dietary Supplements Containing Ephedrine Alkaloids; Reopening of the Comment Period; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Food and Drug Administration is correcting a proposed rule that appeared in the **Federal Register** of March 5, 2003 (68 FR 10417). The document reopened for 30 days the comment period for a proposed rule entitled ''Dietary Supplements Containing Ephedrine Alkaloids'' (June 4, 1997, 62 FR 30678). The former document was published with an inadvertent error. This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 03–5072, appearing on page 10417 in the **Federal Register** of Wednesday, March 5, 2003, the following correction is made:

1. On page 10420, in the second column, reference 7 is corrected to read:

7. Shekelle, P., S. Morton, M. Maglione, et al., ''Ephedra and Ephedrine for Weight Loss and Athletic Performance Enhancement: Clinical Efficacy and Side Effects,'' Evidence Report/Technology Assessment No. 76 (Prepared by Southern California Evidence-based Practice Center, RAND, under Contract No. 290–97–0001, Task Order No. 9), Agency for Healthcare Research and Quality, February 2003, Publication No. 03–E022, Rockville, MD.

Dated: March 17, 2003.

**William K. Hubbard,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. 03–6963 Filed 3–24–03; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 920

**[MD–048–FOR]**

### Maryland Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, OSM, are announcing receipt of a proposed amendment to the Maryland regulatory program (the ''Maryland program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Maryland proposes revisions to and additions of rules about descriptions of proposed mining operations, impoundments, and inspection and certification of impoundments.

This document gives the times and locations that the Maryland program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., e.s.t. April 24, 2003. If requested, we will hold a public hearing on the amendment on April 21, 2003. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on April 9, 2003.

**ADDRESSES:** You should mail or hand deliver written comments and requests to speak at the hearing to George Rieger at the address listed below.

You may review copies of the Maryland program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Oversight and Inspection Office: Mr. George Rieger, Oversight and Inspection Office, Office of Surface Mining Reclamation and Enforcement, Three Parkway Center, Pittsburgh, PA 15220, 412–937–2153, *grieger@osmre.gov;* and C. Edmon Larrimore, Program Administrator, Mining Program, Maryland Department of the Environment, 1800 Washington Blvd., Baltimore, MD 21230, 410–537–3573.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Telephone: 412–937–2153. Internet: *grieger@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Maryland Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

## I. Background on the Maryland Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Maryland program on February 18, 1982. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Maryland program in the February 18, 1982, **Federal Register** (47 FR 7214). You can also find later actions concerning Maryland's program and program amendments at 30 CFR 920.15, 920.16, 920.20, and 920.25.

## II. Description of the Proposed Amendment

By letter dated November 25, 2002, Maryland sent us a proposed amendment to its program (Administrative Record No. MD–577–21) under SMCRA (30 U.S.C. 1201 *et seq.*). Specifically, Maryland proposes to amend several sections of the Code of Maryland Regulations (COMAR) including sections 26.20.02.13, 26.20.21.01, 26.20.21.08, and 26.20.21.09 as they relate to impoundments. The proposed amendments to each section are outlined below. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

Maryland's proposed amendment contains various references to both the Soil Conservation Service (SCS) and the Natural Resources Conservation Service (NRCS). To prevent any confusion, it should be noted that the NRCS is an agency of the U.S. Department of Agriculture (USDA) and was formally known as the SCS. Therefore, any documents released before the SCS became the NRCS and referenced in Maryland's proposed amendment are referenced as SCS documents.

### *26.20.02.13 Description of Proposed Mining Operations*

Maryland proposes changes to COMAR section 26.20.02.13 subsections U, V, and AA. Subsection U currently requires ''[a] general plan for each proposed sedimentation pond, water impoundment, excess spoil disposal structure, and coal processing waste bank, dam, or embankment within the proposed mine plan area,'' which meet certain enumerated criteria. Maryland proposes to change this regulation by removing the phrase ''excess spoil disposal structure,'' and by adding ''siltation structures,'' before the term ''sedimentation pond.'' Therefore, if we approve the proposed changes, the new rule would read as follows:

> U. A general plan for each proposed siltation structures, sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed mine plan area. * * *

The enumerated criteria would remain unchanged.

Maryland proposes the same changes to subsection V(1), which currently requires a ''detailed design plan for each proposed sedimentation pond, water impoundment, excess spoil disposal structure, and coal processing waste bank, dam, or embankment within the proposed permit area,'' which meet certain enumerated criteria. Maryland also proposes an addition to the enumerated criteria. A new subsection V(1)(a) is proposed, reading as follows:

> (a) Is designed in compliance with the requirements of COMAR 26.20.21.06 and .08;

If we approve the proposed changes, the current subsections (a)–(d) would therefore become subsections (b)–(e), respectively. Maryland also proposes changes to subsection v(3). The current subsection reads:

> (3) If a sedimentation pond, water impoundment, or coal processing waste dam or embankment is 20 feet or higher or impounds more than 20 acre-feet, the plan shall contain a stability analysis of each structure. The stability analysis shall include but not be limited to strength parameters, pore pressures, and long-term seepage conditions.
>
> The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Maryland proposes to replace the language, ''or embankment is 20 feet or higher or impounds more than 20 acre-feet'' with ''or siltation structure meets the Class (b) or (c) criteria for dams in the USDA, Soil Conservation Service Technical Release No. 60, (October 1985), as incorporated by reference in COMAR 26.20.21.01–1 or meets the size or other criteria of 30 CFR 77.216(a).''

Finally, Maryland proposes changes to subsection AA(1). Subsection AA requires descriptions of excess spoil disposal sites. Subsection AA(1) currently states:

> Descriptions, including appropriate maps and cross-section drawings, of any proposed excess spoil disposal site and design of the spoil disposal structures.
>
> These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the site and structures.

If we approve the proposed changes, the first paragraph of subsection AA(1) would read:

> Each application shall contain descriptions including appropriate maps and cross-section drawings, of any proposed excess spoil disposal site and design of the spoil structures in accordance with COMAR 26.20.26.

No amendments are proposed to the remaining provisions of subsection AA.

*26.20.21*

Maryland proposes a new COMAR subsection 26.20.21.01–1:

.01–1 Incorporation by Reference
The U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, October, 1985), ''Earth Dams and Reservoirs,'' Technical Release No. 60 (TR–60) is incorporated by reference.

*26.20.21.08*

Maryland proposes several changes to COMAR subsection 26.20.21.08. First, Maryland proposes changes to subsection 26.20.21.08A, which lists the general requirements for impoundments. Under the current regulations, the first requirement is that impoundments be designed and constructed to ensure:

(1) Compliance with USDA, Soil Conservation Service, Standards and Specifications for Ponds (Code 378), July, 1981, as incorporated by reference in COMAR 26.17.05.05B(3), if impoundments do not meet the size or other criteria of 30 CFR § 77.216(a) and are located where failure would not be expected to cause loss of life or serious property damage;''

If we approve the proposed changes, COMAR 26.20.21.08A(1) would read as follows:

(1) Compliance with USDA, Natural Resources Conservation Service, Maryland Conservation Practice, Standard Pond 378 (January 2000), as incorporated by reference in COMAR 26.17.02.01–1B(2).

Maryland also proposes to change the second requirement of subsection A. The current requirement reads as follows:

(2) Compliance with requirements of COMAR 26.17.05.05 if the embankment is more than 15 feet in height as measured from the upstream toe of the embankment to the crest of the emergency spillway;

Maryland proposes changing the reference to COMAR 26.17.05.05 to COMAR 26.17.04.05.

A new subsection (3) is also proposed:

(3) Impoundments meeting the Class (b) or (c) criteria for dams in Earth Dams and Reservoirs, TR–60 shall comply with ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60 and the requirements of this regulation;''

Should we approve the proposed changes, the current requirements (3)–(15) would therefore be changed to (4)–(16), respectively, but would otherwise remain unchanged.

Second, Maryland proposes changes to subsection B of COMAR section 26.20.21.08, which addresses the stability of impoundments. COMAR section 26.20.21.08B(1) currently requires that:

(1) Impoundments meeting the size or other criteria of 30 CFR 77.216(a), located where failure would be expected to cause loss of life or serious property damage, or a coal mine waste impounding structure, shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least 1.2.

If we approve Maryland's proposed changes, the above language would read:

(1) Impoundments meeting the Class (b) or (c) criteria for dams contained in ''Earth Dams and Reservoirs'', TR–60 or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions and a seismic safety factor of at least 1.2.

COMAR section 26.20.21.08B(2) currently requires that:

(2) Except for coal mine waste impounding structures and impoundments located where failure would be expected to cause loss of life or serious property damage, impoundments not meeting the size or other criteria of 30 CFR 77.216(a) shall be constructed to achieve a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.

Should we approve the proposed changes, section 26.20.21.08B(2) would read:

(2) Impoundments not included in § B(1) of this regulation, except for coal mine waste impounding structures shall be constructed to achieve a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.

No changes are proposed for subsections (3)–(5) of section 26.20.21.08B.

Maryland also proposes to add a new COMAR section 26.20.21.08C. The proposed subsection is quoted below:

C. Freeboard.
(1) Impoundments shall have adequate freeboard to resist overtopping by waves and sudden increases in storage volume.
(2) Impoundments meeting the Class (b) or (c) criteria for dams in ''Earth Dams and Reservoirs'', TR–60 shall comply with the freeboard hydrograph criteria in ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60.

Should we approve the proposed amendments, the current subsections C and D would therefore become subsections D and E, respectively, and further amended as follows. The current subsection C(2) now reads:

(2) For an impoundment meeting the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

If we approve the proposed changes, subsection C(2) would become D(2) and read:

(2) For an impoundment meeting the Class (b) or (c) criteria for dams contained in ''Earth Dams and Reservoirs'', TR–60 or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

Finally, Maryland proposes changes to COMAR 26.20.21.08D. As noted above, the proposed addition of a new subsection C would change the current subsection D to E should we approve the proposed changes. Further, the State proposes changes to the current subsection D(3). Currently subsection D(3) contains subsections (a) and (b), which contain the required design precipitation event for impoundments meeting the spillway requirements of the section. The State proposes to add a new subsection D(3)(c):

(c) For impoundments meeting the Class (b) or (c) criteria for dams in ''Earth Dams and Reservoirs'', TR–60, in accordance with the emergency spillway hydrograph criteria in the ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60, or larger event specified by the Department.

Because a new subsection D(3)(c) is proposed, the State proposes to change subsection D(3)(b) by removing the period at the end of the sentence and adding a semicolon followed by the word ''or.'' If we approve the proposed changes, subsections E through I would be changed to F through J, respectively, but would otherwise remain unchanged.

*26.20.21.09*

Maryland proposes changes to COMAR 26.20.21.09D, which relates to the examination of impoundments. Subsection D(1) currently states:

(1) Impoundments subject to 30 CFR 77.216 shall be examined in accordance with 30 CFR 77.21–3. Other impoundments shall be examined at least quarterly by a qualified person for appearance of structural weakness and other hazardous conditions.

If we approve the proposed changes, COMAR section 26.20.21.09D(1) will read:

(1) Impoundments meeting the Class (b) or (c) criteria for dams in ''Earth Dams and Reservoirs'', TR–60 or the size or other criteria of 30 CFR 77.216 shall be examined in accordance with 30 CFR 77.216–3. Other impoundments not meeting the Class (b) or (c) criteria for dams in ''Earth Dams and Reservoirs'', TR–60 or subject to 30 CFR 77.216 shall be examined at least quarterly by a qualified person for appearance of structural weakness and other hazardous conditions.

Maryland proposes no other changes to the remainder of COMAR 26.20.21.09.

## III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

### Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Oversight and Inspection Office may not be logged in.

*Electronic Comments*

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. MD–048–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Oversight and Inspection Office at 412–937–2153.

*Availability of Comments*

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on April 9, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

*Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

## IV. Procedural Determinations

*Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian tribes.

*Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 920**

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 5, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 03–7023 Filed 3–24–03; 8:45 am]

BILLING CODE 4310–05–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD08–02–035]**

**RIN 1626–AA09**

## Drawbridge Operation Regulation Change; St. Croix River, Minnesota and Wisconsin

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** The Coast Guard published a notice of proposed rulemaking (NPRM) on April 16, 2002, proposing to change the regulations governing four drawbridges across the St. Croix River. The NPRM contained a statement regarding the S36 Bridge, mile 23.4, at Stillwater that might have confused the public. The Coast Guard is further explaining the statement and reopening the comment period for 30 days.

**DATES:** Comments must be received by April 24, 2003.

**ADDRESSES:** Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD08–02–035 and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (314) 539–3900, extension 2378. The Bridge Branch maintains the public docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger K. Wiebusch, Eighth Coast Guard District Bridge Branch, Bridge Administrator, (314) 539–3900, extension 2378.

**SUPPLEMENTARY INFORMATION:** The Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** on April, 16, 2002, (67 FR 18521), proposing to amend the operating regulations governing four bridges across the St. Croix River. The NPRM stated that the existing regulation for the S36 Bridge in Stillwater, Minnesota, 33 CFR 117.667(b), contained a 24-hour notice requirement for openings beginning on October 16. In fact, operation of the S36 Bridge is currently regulated by 33 CFR 117.5 which requires that the bridge open on signal at all times. The NPRM proposed to add a new paragraph to the existing S36 Bridge regulation, § 117.667(b)(3), to require 24-hour notice for the opening of the S36 Bridge between October 16 and May 14. The Coast Guard is reopening the comment period for 30 days to take additional comments regarding this explanation.

Comments that have already been received as of the date of publication of this notice will remain part of the docket for this proposed rule. Those comments, and any new comments received before the expiration of the additional comment period, will be considered in developing a final rule.

Dated: March 12, 2003.

**Roy J. Casto,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 03–7079 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF DEFENSE

## Corps of Engineers, Department of the Army

## 33 CFR Part 334

## United States Naval Restricted Area, Manchester Fuel Depot, Manchester, WA

**AGENCY:** Army Corps of Engineers, DoD.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The U. S. Army Corps of Engineers is proposing to establish a new restricted area in the waters of Rich Passage and Puget Sound surrounding the Manchester Fuel Depot at Manchester, Washington. The designation would ensure public safety and satisfy the Navy's security, safety, and operational requirements as they pertain to vessels at the Manchester Fuel Depot by establishing an area into

which unauthorized vessels and persons may not enter.

**DATES:** Comments must be submitted on or before April 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Torbett, Headquarters Regulatory Branch at (202) 761–4618 or Mr. Jack Kennedy, Corps Seattle District, at (206) 764–6907.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriation Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps proposes to amend the regulations in 33 CFR Part 334 by establishing a new restricted area at § 334.1244, in the waters of Rich Passage and Puget Sound surrounding the Manchester Fuel Depot at Manchester, Washington. The points defining the proposed restricted area were selected to avoid interference with ferryboats and other users of the adjacent traffic lanes of Rich Passage, and to minimize the restricted area's interference with nearby fish pens in Clam Bay and Rich Passage. In addition to the publication of this proposed rule, the Seattle District Engineer is concurrently soliciting public comment on these proposed rules by distribution of a public notice to all known interested parties.

**Procedural Requirements**

*a. Review Under Executive Order 12866*

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

*b. Review Under the Regulatory Flexibility Act*

This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of the establishment of this restricted area would have no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic, and accordingly, certifies that this proposal, if adopted, will have no significant economic impact on small entities.

*c. Review Under the National Environmental Policy Act*

The Seattle District has prepared a preliminary Environmental Assessment (EA) for this action. The preliminary EA concluded that this action will not have a significant impact on the human environment. After receipt and analysis of comments from this **Federal Register** posting and the Seattle District's concurrent Public Notice, the Corps will prepare a final environmental document detailing the scale of impacts this action will have upon the human environment. The EA will be be available for review at the Seattle District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** paragraph above.

*d. Unfunded Mandates Act*

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act that small governments will not be significantly and uniquely affected by this rulemaking.

**List of Subjects in 33 CFR Part 334**

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, we propose to amend 33 CFR Part 334 as follows:

## PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

**Authority:** 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.1244 is added to read as follows:

**§ 334.1244 Rich Passage, Manchester Fuel Depot, Manchester, Washington; Naval Restricted Area.**

(a) *The area.* The waters of Rich Passage and Puget Sound surrounding the Manchester Fuel Depot Point A, a point along the northern shore of the fuel depot at latitude 47°34′ 03″ North, longitude 122°32′ 17″ West; thence to latitude 47°34′ 00″ North, longitude 122°31′ 50″ West (Point B); thence to latitude 47°33′ 37″ North, longitude 122°31′ 50″ West (Point C); thence to latitude 47°33′ 32″ North, longitude 122°32′ 06″ West (Point D); thence to latitude 47°33′ 45″ North, longitude 122°32′ 20″ West (Point E), a point in Puget Sound on the southern shoreline of the Manchester Fuel Depot.

(b) *The regulation.* (1) All persons and vessels are prohibited from entering the waters within the restricted area for any reason without prior written permission from the Officer in Charge of the Manchester Fuel Depot.

(2) Mooring, anchoring, fishing, transit and/or swimming shall not be allowed within the restricted area without prior written permission from the Officer in Charge of the Manchester Fuel Depot.

(c) *Enforcement.* The regulation in this section shall be enforced by the Officer in Charge of the Manchester Fuel Depot, and such agencies and persons as he/she shall designate.

Approved: February 20, 2003.

**Lawrence A. Lang,**

*Acting Chief, Operations Division, Directorate of Civil Works.*

[FR Doc. 03–6967 Filed 3–24–03; 8:45 am]

BILLING CODE 3710–GM–P

## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Part 1

**[Docket No.: 2003–P–007]**

**RIN 0651–AB59**

## Changes To Implement Electronic Maintenance of Official Patent Application Records

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** The United States Patent and Trademark Office (Office) has established a 21st Century Strategic Plan to transform the Office into a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system. One priority of the 21st Century Strategic Plan is the beginning-to-end electronic processing of patent applications. The Office is proposing changes to the rules of practice in this notice to adapt to a patent electronic image management system. Specifically, the changes proposed in this notice facilitate electronic data capture and processing, streamline the patent application process, and simplify and clarify the pertinent provisions of the rules of practice.

**DATES:** To be ensured of consideration, written comments must be received on or before April 24, 2003. No public hearing will be held.

**ADDRESSES:** Comments should be sent by electronic mail message over the Internet addressed to: *PatentEFW.comments@uspto.gov.* Comments may also be submitted by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231; or by facsimile

to (703) 872–9411, marked to the attention of Robert Clarke. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3 ½ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, located at Room 3D65 of Crystal Plaza ¾, 2201 South Clark Place, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: *http://www.uspto.gov*). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Clarke ((703) 305–9177), Senior Legal Advisor, or Robert J. Spar ((703) 308–5107), Director, Office of Patent Legal Administration (OPLA), directly by phone, or by facsimile to (703) 305–1013, marked to the attention of Mr. Clarke, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The Office is increasing the integrity of its internal patent application record maintenance by adopting a new electronic data processing system for the storage and maintenance of all the records associated with patent applications. Because the system is consistent with the data processing system used by the European Patent Office (EPO), it will also improve information exchange among the Intellectual Property Offices.

The system will use image technology to replace the standard paper processing of patent applications currently used in the Office. The paper document application file contents (including the specification, oath or declaration, drawings, information disclosure statements, amendments, Office actions, and file jacket notations) of pending applications will be scanned into electronic image files. All processing and examination will be performed with the electronic image files, instead of the paper source documents, by all Office personnel.

The system will affect applicants minimally during the patent application process, because the program affects internal operations and not external communications. Applicants will continue to send and receive Office correspondence in paper form, although the Office encourages use of the existing alternative electronic filing system resources for application filings and certain information disclosure statement submissions. The proposed changes to the rules of practice in title 37 of the Code of Federal Regulations (CFR) are designed to improve internal operations' use of the electronic format, primarily by easing the requirements upon applicants in amendment practice and information disclosure statement submissions. The electronic nature of patent records permits their viewing by the public through the Patent Application Information Retrieval (PAIR) system, which has a number of advantages: it provides notice to applicants of certain examination processing activities (*e.g.*, mailing of Office actions); it assures confidence in the integrity of the Office records; it reduces the handling of the records; and it allows parallel processing of the application by various parts of the Office.

The technology and procedures for the new system are similar to those used at the EPO, but adapted to the Office's legal requirements and existing computer systems. The Office has incorporated the experience and lessons learned from the previously announced prototype program (*USPTO Announces Prototype of Image Processing,* 1265 *Off. Gaz. Pat. Office* 87 (December 17,2002)) into a production system for all patent applications.

The electronic format of applications will reduce delays in moving information within the Office and between the Office, the applicant, other Intellectual Property (IP) Offices and other parties having authority to view the records. It will also reduce the potential for loss of records and misfiling, provide the capacity for multiple parties to access the records simultaneously, improve the efficiency of the publication process, and set the Office up for subsequent improvements in electronic communication related to applications between the Office, the applicant, and other parties.

It is also anticipated that the system will facilitate the sharing of information between the Office and other IP Offices. The Office anticipates that agreements to electronically transmit priority documents to certain other IP Offices as well as search results and other application information will be negotiated shortly. Transmission of priority documents electronically directly to the other IP Offices on request of the applicant is anticipated to reduce the overall costs to the applicant and to the other IP Offices (which would receive the certified copy in a format that is easily stored and retrieved on demand). In tandem with this effort is a parallel effort to promote the sharing of information (*e.g.*, search results) concerning related applications by the various IP Offices in order to reduce duplication of efforts, improve the efficiency and quality of examination efforts, and decrease workload. Thus, it is anticipated that the Office's migration to an electronic environment together with international negotiations will improve the efficiency and work quality of the Office.

**Discussion of Specific Rules**

*Section 1.3:* Section 1.3 is proposed to be amended to provide that papers presented in violation of the decorum and courtesy requirement will not be entered. The Office is capturing electronic images of all documents (papers) that will be the official records of certain applications. If the Office has captured the image as an electronic sheet(s), the Office would electronically remove the document from the Official file (the collection of documents related to a patent application or patent and which would be in this instance an electronic file) and from the Office computer systems. If the Office has not captured the image, the paper would not be entered in the Official file (which would in this instance be a paper file). In either event, the Office would provide notice in the Official file that the paper will not be available to the public. If the paper is intended as a reply to an Office action, the reply will not be considered a *bona fide* reply under § 1.135(c) and the period set in the prior Office action will continue to run. Similarly, a paper submitted in violation of § 10.10(b) that is intended as a reply will not be entered in the Official file and will not be treated as an unsigned reply (nor as a signed reply). Therefore, the reply will not toll the time period set in a prior Office action.

*Section 1.9:* Section 1.9 is proposed to be amended to clarify that the word ''paper'' and ''papers'' refer to a document or documents, which may be electronic records or physical paper sheet(s).

*Section 1.14:* Section 1.14 explains that applications for patents are generally preserved in confidence, and sets forth the special circumstances (35 U.S.C. 122(a)) under which a member of the public may have information about, copies of, or access to a patent application. Section 1.14 is proposed to be revised to clarify the rule and to expand the rule to provide for electronic files and electronic exchange of documents.

Paragraph (a)(1) has been rewritten to list the records that are available. The term ''file wrapper and contents'' has been replaced with the term ''file contents'' to avoid confusion with the paper (non-electronic) file jacket and its contents. Paragraph (a)(1) rephrases the provisions of current §§ 1.14(c) and (e) to assist the public in understanding what applications are available to the public. Accordingly, paragraph (a)(1), as rewritten, is divided into paragraphs (a)(1)(i) through (a)(1)(vi) listing different types of application files and explaining whether any part of the file content is available to the public. For example, paragraph (a)(1)(iii) explains that published pending applications are available to the public, upon written request, and payment of the appropriate fee, and that the original paper file of the pending application that was published as a patent application publication is not available to the public. In addition, it is proposed in the new paragraphs (a)(1)(iv) and (a)(1)(v) that where the benefit of an application is relied upon pursuant to 35 U.S.C. 119(e), 120, 121 or 365 in certain applications, the application will be available in the same manner that the application would have been had the application been referenced in a U.S. patent or U.S. patent application publication. As a result of this proposed rule change if an application is filed as a continuation of an earlier application, and the USPTO publishes the continuation as a patent application publication without a reference to the earlier application, the earlier-filed application will still be available to the public (either the originally filed application or the entire application file, depending upon whether the earlier-filed application is abandoned).

Paragraph (a)(2) is proposed to be revised to combine and restate current §§ 1.14(a)(1) and (b). The application number of any application that claims the benefit of the filing date of a patent or an application that has been published may be obtained from the Patent Application Information Retrieval (PAIR) system on the Office's web site at: *http://pair.uspto.gov*.

Section 1.14 is also proposed to be amended to have a new paragraph (b), to explain that electronic access may be provided to all or part of certain applications. Following migration to an electronic image file as the Official file of patent applications, access will be provided solely to the electronic Official file and not to the original paper document sheets used to create electronic images within the Official file.

Proposed § 1.14(c) is the same as current § 1.14(d). Paragraph (d) of current § 1.14 is proposed to be redesignated as § 1.14(c).

Proposed § 1.14(d) is the same as current § 1.14(f). Paragraph (f) of current § 1.14 is proposed to be redesignated as § 1.14(d).

Section 1.14 is also proposed to be amended to have a new paragraph (e), to provide that the Office may share its electronic application files that have not been published or otherwise made available to the public with another Intellectual Property (IP) Office pursuant to an agreement between the Office and another IP Office and if the applicant expressly consents. The written consent must be filed in the Office for the Office to transmit, or allow access by the other IP Office, to the application or other records associated with the application. The migration to an electronic environment will allow the Office to participate with other IP Offices in more rapid exchange of information, such as priority documents, between IP Offices. It should be noted that following publication, or where the application is otherwise available to the public, the written consent of applicant is not required before access to the application file is provided.

Paragraph (f) of § 1.14 corresponds to paragraph (g) of current § 1.14, which is proposed to be amended to move the text from (g) and of paragraph (g)(1) to paragraph (2), and to provide in the new paragraph (1) that any action of the Board of Patent Appeals and Interferences (BPAI), or any decision on petition, may be published or made available for public inspection without applicant's or patent owner's permission if rendered in a file open to the public pursuant to § 1.11 or available pursuant to § 1.14(e)(2), an application that has been published in accordance with §§ 1.211 through 1.221, or in an application claiming priority to, or the benefit of, an earlier filing date under 35 U.S.C. 119(a)–(d), 120, 121 or 365 of an application that has been published or patented. In paragraph (2), the rule would provide that an action of the BPAI, or any decision on petition, not publishable under paragraph (1) of this section, may be published or made available for public inspection if the Director believes the action or decision involves an interpretation of patent laws or regulations that would be of important precedential value; and the applicant, or any party involved in the interference, does not within two months after being notified of the intention to make the action or decision public, object in writing on the ground that the decision discloses a trade secret or other confidential information and states that such information is not otherwise publicly available. If an action or decision discloses such information, the applicant or party shall identify the deletions in the text of the action or decision considered necessary to protect the information. If the applicant or the party considers that the entire action or decision must be withheld from the public to protect such information, the applicant or party must explain why. Applicants or parties will be given time, not less than twenty days, to request reconsideration and seek court review before any portions of actions or decisions are made public over their objection. This procedure is the same as that of current paragraph (g)(2), but has been reworded for clarity and also to use the terminology ''any action'' of the BPAI or ''decision on petition'' would be publishable, whereas the current rule uses the terminology ''decision by the Director or the BPAI''.

Generally, patent applications are maintained in confidence unless the Director finds ''special circumstances'' due to which information about an application or the application itself may be released. See 35 U.S.C. 122(a). Section 1.14 sets forth when some such ''special circumstances'' have been found, and specifies when release of information about an application or access to all or part of an application may be provided without a petition. Accordingly, as one example of a ''special circumstance,'' as proposed to be amended with new paragraph (f)(1), a BPAI decision would be published, even if the decision does not involve an interpretation of patent laws or regulations that would be precedential so long as the application claims priority to or the benefit of an earlier application that has been published or patented (*e.g.*, a Japanese patent application). The BPAI decision would be published even if the application in which the decision was made requests nonpublication of the application, and the application is not itself patented.

Proposed § 1.14(g) is the same as current § 1.14(h), which is proposed to be redesignated as § 1.14(g).

Proposed paragraph (h) of § 1.14 corresponds to current § 1.14(i), and is further proposed to be amended to explain the meaning of the terms ''Home Copy,'' ''Search Copy,'' and ''Examination Copy,'' and by inserting ''of the publication'' after ''English language translation'' in paragraph (b)(2). Section 13204 of Public Law 107–273 made a technical change to the provisional rights provisions of the

patent statute as to international applications to clarify that a translation of the international publication, as opposed to the international application, is required to be filed in order for a patent owner to obtain provisional rights pursuant to 35 U.S.C. 154(d). In view of this change to the statute, the corresponding reference to the translation in § 1.14 is proposed to be changed to add ''a publication of an international patent application'' after ''English language translation of.'' In addition, it is proposed that the parenthetical phrase at the end of paragraph (h)(1), referencing the fee for a copy of an international application file, or a copy of a document in a file, be changed from a reference to § 1.19(b) rather than § 1.19(b)(2) or § 1.19(b)(3), the fees for the contents of a file or a CD, and the parenthetical phrase at the end of paragraph (h)(2), referencing the fee for a copy of an English language translation in a file, be corrected to refer to § 1.19(b)(4), the fee for a document, rather than § 1.19(b)(2) or § 1.19(b)(3).

Proposed § 1.14(i) is the same as current § 1.14(j), which is proposed to be redesignated as § 1.14(i)

As proposed to be amended, § 1.14 will apply to all patent applications filed before, on, or after the date that the amendment to § 1.14 becomes final.

*Section 1.17:* Section 1.17 is proposed to be amended to eliminate the reference to returning information in paragraph (h) because expunged information will not be returned under § 1.59 as proposed to be amended.

*Section 1.19:* Section 1.19 is proposed to be amended by revising paragraph (b)(1) to eliminate the fee for providing an electronic copy of an application as filed to another IP Office if applicant consents in writing by filing an authorization under 35 U.S.C. 122(a) to permit the Office to exchange information related to the entire file record of the application with the other IP Office. The electronic transmission would serve as the certified copies of applications as filed that can be required by the other IP Offices under Article 4(D)(3) of the Paris Convention.

*Section 1.52:* Section 1.52 is proposed to be amended to clarify the requirement for proper paper sizes in paper communications submitted to the Office and to set forth the analogous requirements for electronic communications.

The Office plans to capture electronic images of all documents that form the record of patent examination. These images will form the Official file of the application. Applicants will have the option of submitting application documents and other communications to the Office on paper, by facsimile transmission, or via the Office's electronic filing system (EFS). The existing requirements for paper and facsimile submissions (as well as the prohibition against filing patent applications by facsimile, see § 1.6(d)(3)) are retained, and the requirements for electronic submissions are added. One newly added requirement for paper submissions requires that the papers not be permanently bound because the papers must be readily separable for scanned entry into the image system. The use of binder clips or standard office staples will generally be acceptable. The detailed requirements for electronic submissions are provided in the Office's EFS documentation (available electronically at www.uspto.gov) and the proposed amendments direct the affected party's attention to those requirements.

Paragraph (a)(1) of § 1.52 is proposed to be amended to clarify that it pertains to paper and facsimile submissions, and that such submissions not be permanently bound together.

Paragraph (a)(2) of § 1.52 is proposed to be amended to clarify that it pertains to paper and facsimile submissions.

Paragraph (a)(3) of § 1.52 is proposed to be amended to clarify that it pertains to paper and facsimile submissions.

Paragraph (a)(5) of § 1.52 is proposed to be amended to clarify that it pertains to paper and facsimile submissions.

Paragraph (a) of § 1.52 is also proposed to be amended by adding paragraphs (a)(6) and (a)(7) to set forth that papers submitted electronically must comply with the Office's EFS requirements and that failure to comply will result in a requirement for correction.

Paragraphs (b)(3) and (b)(4) of § 1.52 are proposed to be amended to clarify that the requirements for the abstract and claims to begin on a separate sheet on physical paper are similarly required to begin on a separate electronic page in an electronic submission.

Paragraph (b)(7) of § 1.52 is proposed to be amended to explain the consequences of a failure to provide compliant papers within the set time period. That is, as proposed to be amended, the rule will provide that compliant papers must be provided within the set time period in order to avoid abandonment of the application in the case of an applicant for patent, termination of proceedings in the case of a patent owner in a reexamination proceeding, or refusal of consideration of the papers in the case of a third party requester in a reexamination proceeding.

*Section 1.59:* Section 1.59 is proposed to be amended to eliminate references to returning documents that have been expunged to recognize that, with electronic Official files, there will be nothing to return when a paper is expunged. The Office is capturing electronic images of all documents that form the Official file. Where the image is generated from a physical source document, the originating document may be disposed of once the electronic image accuracy is verified. Therefore, if a document is to be expunged from the record, the only operation that will be required will be removal of the image from the Official file. Paragraph (a)(1) of § 1.59 is proposed to be amended by deleting the phrase ''and returned'' from the first sentence, and deleting the second sentence. Paragraph (b) of § 1.59 is proposed to be amended by deleting the phrase ''and return'' from each of the first and second sentences.

*Section 1.71:* Section 1.71 is proposed to be amended by adding a new paragraph (f) to require that the first page of a specification commence on a new sheet and to require that no sheet including part of the text of the specification include any other material. Claims must also commence on a new sheet and in accordance with the proposed changes to § 1.75, must not include other parts of the application.

*Section 1.72:* Paragraph (b) of § 1.72 is proposed to be amended to prohibit the paper presenting the abstract to include any other portions of the application or other material. Presentation of material other than the abstract on the same page as the abstract makes the electronic indexing of the application more difficult. In addition, it is proposed to remove the last sentence of paragraph (b) to eliminate the prohibition on using the abstract to be used to interpret the claims to conform the rule to be consistent with Federal Circuit case law. *See Hill-Rom Co.* v. *Kinetic Concepts, Inc.,* 209 F.3d 1337, 1341 n.*, 54 USPQ2d 1437, 1440 n.1 (Fed. Cir. 2000).

*Section 1.75:* Paragraph (h) of § 1.75 is proposed to be amended to prohibit a paper presenting claims from including any other portions of the application or other material. Presentation of material other than the claims on the same page as one or more claims makes the electronic indexing of the application more difficult.

*Section 1.97:* Section 1.97 is proposed to be amended to move the last date on which an information disclosure statement (IDS) may be filed to the day prior to the mailing of the next Office action from the Office.

Sections 1.97(b) and (c) are proposed to be amended to move the last date on

which an IDS may be filed from the day of mailing of an Office action to the day before the mailing of an Office action.

Section 1.97(b)(3) is proposed to be amended to require filing of an IDS before the day of the mailing of the first Office action.

Section 1.97(b)(4) is proposed to be amended to require filing of an IDS before the day of the mailing of the first Office action after the filing of a request for continued examination under § 1.114.

Section 1.97(c) is proposed to be amended to require filing of an IDS before the day of the mailing of any of a final action under § 1.113, a notice of allowance under § 1.311, or an action that otherwise closes prosecution in the application, provided it is accompanied by one of: (1) The statement specified in § 1.97(e); or (2) the fee set forth in § 1.17(p).

With PAIR, applicants can easily determine when Office actions are mailed by reviewing the change of status information for an application that is available over the Internet. Unless applicants are required to submit an IDS before Office actions are mailed, applicants may unfairly delay prosecution to meet their short-term needs by mailing an IDS on the same day as Office actions are mailed upon seeing that a mailing occurred through PAIR. Therefore, in order to promote efficient processing and provide the benefits of PAIR, a change in the ''mailing rule'' is being proposed.

*Section 1.98:* Section 1.98 is proposed to be amended by adding a new paragraph (e), which provides that the requirement in § 1.98(a)(2)(i) for a copy of all listed U.S. patents and U.S. patent application publications does not apply to any IDS submitted in compliance with the Office's electronic filing system. Thus, for any IDS submitted to the Office via the Office's EFS, paper copies of U.S. patents and U.S. application publications cited in the IDS would no longer have to be supplied by applicants.

An EFS software upgrade has added an IDS, submitted under the provisions of §§ 1.97 and 1.98, as a type of electronic submission that may be made via the Office's EFS. Currently, the EFS may only be used to submit: (1) Certain non-provisional utility patent applications; (2) provisional applications; (3) biotechnology sequence listings; (4) copies of patent applications for purposes of having the copies of the patent application published (redacted publication, republication as amended, or voluntary publication); (5) assignments of patents and applications; and (6) Information Disclosure Statements. *See Legal Framework for the Use of the Electronic Filing System,* 1263 *Off. Gaz. Pat. Office* 60, 61 (Oct. 8, 2002). With the EFS software upgrade, an applicant is able to electronically transmit an IDS with the filing of a new utility patent application, or as a subsequent filing. This EFS software upgrade is NOT usable for third party information disclosure submissions under § 1.99. The IDS submission via EFS is the only electronic substitute for a paper IDS submission contemplated. EFS has been available to the general public for limited electronic filing since October 2000. *See Electronic Filing System Available to Public,* 1240 *Off. Gaz. Pat. Office 45* (Nov. 14, 2000).

Applicants may file an IDS via EFS by (1) entering the references' citation information in a fillable electronic form, equivalent to the paper PTO–1449 form (or revised form PTO/SB/08A and 08B) by using EFS software; and (2) transmitting the fillable electronic form data to the Office via EFS. This electronic EFS form currently allows only citations for U.S. patents and U.S. patent application publications. If any references to foreign patent documents or non-patent literature documents or unpublished U.S. applications are to be cited, then applicants will continue to submit those citations on a separate, conventional paper PTO–1449 form (or equivalent form) delivered with a printed copy of each cited foreign patent document, non-patent literature document and unpublished U.S. application via mail, facsimile transmission, or hand delivery. Applicants need not send the Office copies of any U.S. patent or U.S. application publication documents cited on a fillable electronic IDS form that is electronically transmitted to the Office via EFS. In those instances in which an applicant sends an IDS on the same day by EFS and by conventional delivery, and a fee under § 1.97 is due, only one fee will be due if the applicant informs the Office in the conventional submission that such a submission is associated with an electronic submission on the same day in which the fee was paid.

The EFS software provides a fillable electronic IDS form equivalent to a paper PTO–1449, Information Disclosure Statement form, in which citations for up to 50 U.S. patents and up to 50 U.S. patent application publications may be entered. This EFS fillable form has fields where statements of relevance and where notifications that the documents were cited in a communication from a foreign patent Office in accordance with § 1.97(e) may be given. The EFS upgrade validates the format of data entered into the fillable electronic IDS form and provides the means to specify whether this fillable EFS IDS form is to be linked to an accompanying new application filing or is being filed in a previously filed application, and transmit the XML formatted IDS data on the fillable electronic form to the Office. The EFS software also provides fields to enter required fee payment information under §§ 1.97(c)(2) and (d)(2).

The fillable, EFS IDS form will be entered as a paper (but will actually be part of an electronic database) into the application file contents indicating that it was received on the date the complete transmission containing the form was received in the Office via EFS. This is the date the Office will refer to in considering compliance with § 1.97.

Examiners will consider the U.S. patents and U.S. application publications cited on an EFS transmitted IDS form provided the remaining requirements of §§ 1.97 and 1.98 are met, by reviewing electronic or printed copies produced from the Office's electronic databases. It will be most important that the cited patent and application publication numbers be accurate and devoid of transcription error. There will be no applicant-provided copies of the disclosed documents in the application file for the examiner to review. Instead, because the Office will electronically retrieve the patents and application publications so identified by those numbers, the examiner will only be able to consider the documents so identified. As a corollary, examiners will only consider what is actually cited. Where, for example, an error is made in transcribing a U.S. patent number, and the examiner, after retrieving the patent associated with the number as entered in the IDS, determines that the patent associated with the number as entered in the IDS is not the correct number, because the inventor's name and issue date entered in the IDS does not match the corresponding data on the patent associated with the patent number entered in the IDS, the examiner will follow the procedure regarding the handling of non-complying information disclosure statements set forth in section 609 III(C)(1) of the *Manual of Patent Examination Procedure* (8th ed. 2001) (MPEP). The examiner may either initial the paper copy printed from the electronic IDS to indicate that the erroneously cited patent has been reviewed or line through the citation as not in compliance with § 1.98.

The only procedure for having such documents considered when an

erroneous patent or application publication number is cited in an eIDS will be by citing the correct document identifying number in a subsequent IDS, either paper or electronic, that conforms to the requirements of §§ 1.97 and 1.98, as specified in MPEP 609 III(C)(1) regarding corrections of the information in non-complying information disclosure statements.

The IDS may be submitted as part of an EFS electronic application filing, or subsequent to an application filing, either in paper or via EFS. The ePAVE program will prompt the filer to associate an IDS file with a new application file and to provide payment information, where either is appropriate. As with the other types of electronic submissions, ePAVE will validate the format, display it to the filer, prompt for the filer's electronic signature, use the filer's digital certificate (a digital certificate may be obtained from the Office's Electronic Business Center), to encrypt the whole package, and transmit the submission to the Office. Upon receipt, the Office will send to the filer an electronic post card ''Acknowledgement Receipt'', including a server date stamp, a unique server number, the application number, and confirmation of the number of the files received by the Office. If the IDS submission is subsequent to the application filing, the filer will be required to enter both an application number and a confirmation number. A confirmation number is an additional four-digit identifier assigned to an application, and can be found in the upper left-hand corner of the official filing receipt. A filer will be required to have a customer number, obtained from the Office's Electronic Business Center, and an Office provided digital certificate to use EFS as with current practice.

*Section 1.99:* Section 1.99 is proposed to be amended to provide that the Office will not enter any explanation of the patents or publications, or any other information (that is not limited to patents or publications) included in a submission. The Office will also not enter a submission that is not in compliance with the requirements of this section. The Office is capturing electronic images of all documents that form the Official file of certain applications and the original paper documents, if stored, will be stored off-site and will not be easily accessible, and if destroyed, will not be available. Therefore, any submission, or part of the submission, that is not in compliance with this section would not be captured as electronic images and, if such documents have been entered into the Official file, the Office will electronically remove the documents from the Official file.

Paragraph (d) of § 1.99 is proposed to be amended by deleting the word ''dispose of'' and replacing it with ''not enter.'' Paragraph (e) of § 1.99 is proposed to be amended by deleting the phase ''returned or discarded'' and replacing it with ''will not be entered'.

*Section 1.121:* The manner of making amendments to the specification, claims and drawings is being revised with proposed changes to § 1.121. While the process of making amendments would generally remain the same, relying on the use of replacement versions of the specification, claims and drawing figures, the process for submitting amendments is simplified. The submission of two versions (clean and marked-up) of amended subject matter, and the attendant editorial difficulties associated with this practice, will no longer be required other than for substitute specifications. For amending the specification (§ 1.121(b)(1) and (b)(2)), applicants would be required to submit a replacement paragraph or section marked-up to show changes relative to the immediate prior version. No clean version of replacement paragraphs or sections would be required. When the specification is to be amended extensively, a substitute specification marked-up to show changes relative to the immediate prior version would be submitted, as per § 1.125 which is invoked by § 1.121(b)(3). In this situation, a clean version of the specification would also be required, as per current § 1.125(c). For amending the claims (§ 1.121(c)), applicants would be required to provide replacement claims (marked-up to show changes relative to the immediate prior version) as part of a complete listing of all the claims in the application each time a claim is amended, which listing would include the status of each claim, and the text of each pending claim under examination. No separate clean version would be required at the time a claim is amended. For amending drawing figures (§ 1.121(d)), applicants would be required to submit a replacement figure with the changes made. No pre-approval of proposed changes in red ink will be required. In each situation, an explanation of the changes must be supplied.

This proposed revised process for amending the specification, claims and drawing figures of pending patent applications will further facilitate the advent of electronic examination in the Office. The principal feature of this proposal, and the one which would most significantly impact the examination process, would require that a complete listing of claims (which includes the status of all claims and the text of pending claims under examination) be submitted as part of each amendment document that includes any amendments to the claims, with the complete listing totally replacing any and all previous versions of claims throughout an application. The conversion of all paper-based application files into electronic image format, together with the proposed changes to amendment practice, will enable the complete listing of all of the claims to be conveniently located and easily accessed on a computer screen for review by a patent examiner or the applicant, or where the application is open to the public.

In order to promote uniformity and consistency of practice, the Office, in the proposed changes to § 1.121, would require applicants to utilize only strike-through for deleted subject matter and underlining for added subject matter as markings to show changes made. No other method of markings will be permitted.

As a result of the adoption of the proposed changes to § 1.121, applicants will, in most cases, no longer be required to reproduce lengthy segments of the specification in both clean and marked-up versions. Only a marked-up version of a replacement paragraph or section will be required. Where a substitute specification has been provided because of extensive amendments, the substitute specification should be supplied as a clean replacement version, which will be entered. A marked-up version is also necessary to the examination process to show the examiner the changes that were made. These requirements are the same as the current requirements of § 1.125(b) and (c) for submitting a substitute specification. With respect to the claims, the proposed changes will result in the filing of a complete listing of all of the claims in the application, and the status of each claim (in the listing), in a single amendment document each time an amendment to the claims is made. The status of every claim will be indicated in a parenthetical expression following each claim number, using the identifiers ''(original)'', ''(previously amended)'', ''(currently amended)'', etc. Only the claims being changed at the time an amendment is filed will include the markings to show the changes. Claims not currently amended will be presented in the same amendment document in clean version. Applicants will no longer be required to submit both a clean version and a separate marked-up version of claims being

changed. Further, the submission of a clean version in addition to a marked-up version is strongly discouraged. Dual versions (clean and marked-up) may get confused and the wrong version may get entered into the application file. In such an event, an incorrect message would be given, as providing any claim text in clean version will be taken to be an assertion by applicants that no changes have been made relative to the immediate prior version. The burden of ensuring accuracy between the most recent and the prior versions would be borne by applicants.

Amendments to a drawing figure will be made by submitting the actual changes in a replacement drawing sheet which is in compliance with § 1.84. If multiple drawing figures are on a single drawing sheet, the replacement drawing sheet should include the figures which have not been revised as well as the revised drawing figure(s). A detailed explanation of each of the changes made to a drawing figure must also be provided in a separate section of the amendment document. If the changes are not acceptable to or approved by the examiner, the applicant would be notified and given a requirement for corrective action in the next Office action. In the absence of an objection to the drawings, no further drawing submission by applicant will be required.

The proposed changes to amendment practice, if adopted in the final rule, will provide amendments ready for scanning and indexing into an electronic image format and incorporated into an electronic file wrapper that will be available and accessible to examiners on their individual PCs for further examination. Due to the large backfile of pending applications in the Office, the implementation of the scanning system and the creation of electronic file wrappers will be phased into the technology centers over a period of time. The proposed changes to the rule will require applicants to consolidate all of the claims of any currently pending application into a single amendment document each time any claim is amended, or a new claim is added. In the final rule, if it is adopted as proposed, all amendment documents will be required to include the full text of all pending claims (except for withdrawn claims) with their status in parentheses after the claim numbers, as well as an indication of the status of any claims which have been currently or previously canceled or withdrawn.

Section 1.121(b) is proposed to be amended to clarify that applicants must make amendments to the specification by use of (1) replacement paragraph, or (2) replacement section. Provisions for submitting a substitute specification have been cross-referenced to § 1.125. Provisions for amending claims are provided for in other sections of this rule (paragraph (c)).

It is proposed that paragraphs (b)(1)(ii), (b)(2)(ii) and (b)(3)(ii) be changed to require that the amendment include a version of the amended paragraph, section or substitute specification (by reference to § 1.125) marked-up to show the changes by using ''strike-through'' as the method for showing deletions of subject matter in the specification. Similarly the Office proposes to require underlining to show additions of subject matter. Only strike-through and underlining should be used as the method to show changes.

It is further proposed to eliminate current paragraphs (b)(1)(iii), (b)(2)(iii) and (b)(3)(iii).

It is proposed to add new paragraph (b)(5) to indicate that precise instructions as to location of the changes must be provided for entry of amendments to the specification. Deletion of a paragraph or section may be made by instruction to cancel only; no actual text to be canceled should be submitted. Once an amended paragraph, section, or substitute specification is presented in an amendment document, there is no further need for the applicant to re-present the amended submission in a subsequently filed amendment document.

It is proposed to replace current paragraphs (c)(1) through (c)(3) with revised paragraphs (c) and (c)(1) through (c)(5). Paragraph (c) as revised would provide for a total rewriting of a claim each time the claim is amended, including markings to show the changes being made relative to the immediate prior version of the claim. This section would also require submitting a complete listing of all pending claims in the application, including the status of each and every claim in every amendment document that includes an amendment to the claims. This listing would replace all prior versions of the claims (except for any withdrawn claims), and listings of the claims in the application. The claim status required with each amendment document would be indicated in a parenthetical expression following the claim number. The status of all claims in the application, even those previously canceled or withdrawn, would be indicated with each amendment document.

In order to promote uniformity and consistency, only the following defined identifiers should be used to indicate the status of the claims (in parentheses after the claim number):

(Original): Claim filed with the application
(Currently amended): Claim being amended in the current amendment document
(Previously amended): Claim not being currently amended, but which was amended in a previous amendment document
(Canceled): Claim deleted from the application
(Withdrawn): Claim still in the application, but in a nonelected status
(Previously added): Claim added in an earlier amendment document
(New): Claim being added in the current amendment document
(Reinstated—formerly claim # _): Claim deleted in an earlier amendment document, but represented with a new claim number in current amendment
(Previously reinstated): Claim deleted in an earlier amendment and reinstated in an earlier amendment document
(Re-presented '' formerly dependent claim # _):Dependent claim re-presented in independent form in current amendment document
(Previously re-presented): Dependent claim re-presented in independent form in an earlier amendment, but not currently amended

As a result of this proposed change, each amendment document would be self-contained, *i.e.*, it would include a complete set of claims for examination and would provide the status of all of the claims in one location in the file.

An example of how the claims, and the status of the claims, would be presented is as follows (use of the word ''claim'' before the claim number is optional):

Claims 1–5 (canceled) (Note: consecutive canceled or withdrawn claims may be aggregated)
Claim 6 (withdrawn)
Claim 7 (previously amended): A bucket with a handle
Claim 8 (currently amended): A bucket with a green blue handle
Claim 9 (withdrawn)
Claim 10 (original): A bucket with a wooden handle
Claim 11: (new): A bucket with plastic sides and bottom

Paragraph (c)(1) would require the use of strike-through (for deletions) and underlining (for additions) to indicate how an amended claim differs from its immediate prior version. The proposed amendment to this section eliminates the previously accepted use of equivalent marking systems. No other

method of markings or comparison (other than strike-through and underlining) would be permitted. Only claims of the status ''currently amended'' would include markings showing changes made.

Paragraph (c)(2) would require that the current amendment document include not only the marked-up version of claims being currently amended, but also the submission of a clean version of pending claims not being amended in the current amendment document. The presentation of clean text (not underlined) in any claim would constitute an assertion that no changes have been made from the immediate prior version of the same claim. This would relieve the Office of the burden of cross-reading various versions of the same claim to ensure accuracy of rewritten claims. The text of canceled or withdrawn claims should not be presented in each amendment document; these claims should be indicated as being in the status of ''(canceled)'' or ''(withdrawn)'.

Paragraph (c)(3) would provide for the cancellation of any claim by mere instructions to cancel. If no instructions to cancel a specific claim were submitted in an amendment paper, listing the claim as canceled in the claim status would constitute an instruction to cancel the claim; no other instruction would be necessary. Any added claims (in the current amendment document) should be merely identified in the status parenthetical expression as ''(new)'' and should not be underlined.

As proposed in paragraph (c)(4), the claims should be presented in ascending numerical order. This would prevent the grouping of claims by status (all new claims together, all amended claims together, etc.), and ensure a complete set of claims in numerical order, regardless of status. Consecutive claims of the same status, however, could be aggregated (*e.g.*, ''Claims 1–5 (previously canceled)''). Further, it is proposed to revise paragraph (c)(4) to require that any sheet of an amendment paper including part of the text of a claim shall not include material directed to any other part of the amendment or any remarks concerning the claims. This requirement will facilitate indexing of the application papers.

Paragraph (c)(5) would require that a claim canceled in its entirety could only be reinstated if presented as a new claim with a new claim number.

Paragraph (d) would require that any drawing changes be submitted in compliance with § 1.84 on replacement sheets in an attachment to an amendment document. An accompanying detailed explanation of all of the changes would be provided on a separate sheet in the drawing amendments or remarks section of the amendment document. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of an amended drawing should not be labeled as ''amended.'' If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled ''Replacement Sheet'' in the page header so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant would be notified and informed of any required corrective action in the next Office action. No further drawing submission of the amended drawing figure(s) by applicant would be required, unless applicant is so notified.

As proposed in paragraph (d)(1), the applicant would be permitted to provide a marked-up copy of any figure being amended with the amendment document. This mark-up would be used by the Office to determine the changes being made in the drawings.

As proposed in paragraph (d)(2), examiners would be permitted to require a marked-up copy of a figure that has been or is required to be revised. The examiner may make the requirement in an Office action requiring a drawing correction, or after a drawing amendment has been made.

A change is proposed to the last line of paragraph (g) in order to bring it into conformity with earlier changes, ''(c)(1)'' is changed to ''(c) and (c)(1) through (c)(5)'.

It is proposed that paragraph (h) be added to require that each section of an amendment (*e.g.*, amendments to the claims, amendments to the specification, replacement drawings, remarks) begin on a separate sheet of the amendment paper.

Paragraphs (h), (i), and (j) have been renamed as (i), (j), and (k), respectively.

*Section 1.125:* Paragraph (b) is proposed to be revised to add a cross-reference to § 1.312 to remind applicants that for submissions of substitute specifications filed after the notice of allowance has been mailed and up to the time of payment of the issue fee, entry of the substitute specification is not a matter of right.

Paragraphs (c) of § 1.125 is proposed to be revised to require the presentation by applicant of both a marked-up version of the specification (using strike-through to indicate deleted subject matter and underlining to indicate added subject matter) and a clean version without markings.

*Section 1.823:* Section 1.823 is proposed to be amended by revising paragraph (a)(1) to require that any sheet including a part of a sequence listing not include material other than part of a sequence listing. This change is to facilitate indexing of the specification.

**Rule Making Considerations**

*Administrative Procedure Act:* This notice proposes changes to the rules of practice that facilitate electronic image record management of patent application files to support the beginning-to-end electronic processing of patent applications. The changes proposed in this notice are limited to the format for and the manner of making amendments to patent applications, the handling of patent applications and other papers within the Office, the manner of filing information disclosure statements, and the procedures for electronic exchange of priority documents with other intellectual property offices. Therefore, these changes involve rules of agency practice and procedure under 5 U.S.C. 553(b)(A). *See Bachow Communications Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001). Therefore, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). Nevertheless, the Office is providing this opportunity for public comment on the changes proposed in this notice because the Office desires the benefit of public comment on these proposed changes.

*Regulatory Flexibility Act:* As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. *See* 5 U.S.C. 603.

*Executive Order 13132:* This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

*Executive Order 12866:* This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

*Paperwork Reduction Act:* This proposed rule involves information collection requirements which are

subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this proposed rule have been reviewed and previously approved by OMB under the following control numbers 0651–0021, 0651–0031, 0651–0032 and 0651–0033. The United States Patent and Trademark Office is not resubmitting an information collection package to OMB for its review and approval because the changes in this proposed rule would not affect the information collection requirements associated with the information collection under OMB control numbers 0651–0021, 0651–0031, 0651–0032 and 0651–0033.

The title, description and respondent description of each of the information collections is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impacts of the changes in this proposed rule are to (1) expressly provide for the electronic submission of an information disclosure statement; (2) provide for a slight change in the format of an application being filed in order to accommodate for the scanning and indexing of different sections of the application file; and (3) provide for a change in the manner of making amendments to an application consistent with the Office's efforts to establish a patent electronic image management system.

*OMB Number:* 0651–0021.

*Title:* Patent Cooperation Treaty.

*Form Numbers:* PCT/RO/101,ANNEX/134/144, PTO–1382, PCT/IPEA/401, PCT/IB/328, PTO/SB/61/PCT, PTO/SB/64/PCT.

*Type of Review:* Approved through December of 2003.

*Affected Public:* Individuals or Households, Business or Other For-Profit, Federal Agencies or Employees, Not-for-Profit Institutions, Small Businesses or Organizations, farms, and State, Local or Tribal Government.

*Estimated Number of Respondents:* 331,407.

*Estimated Time Per Response:* 0.25 (15 minutes) to 4.0 (4 hours).

*Estimated Total Annual Burden Hours:* 401,202 hours.

*Needs and Uses:* The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

*OMB Number:* 0651–0031.

*Title:* Patent Processing (Updating).

*Form Numbers:* PTO/SB//08A/08B/21/22/23/24/25/26/27/30/31/32/35/37/36/ 42/43/61 61/PCT/62/63/64 64/PCT/67/68/91/92/96/97 PTO–2053-A/B PTO–2054–A/B PTO–2055–A/B.

*Type of Review:* Approved through April of 2003.

*Affected Public:* Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

*Estimated Number of Respondents:* 2,247,270.

*Estimated Time Per Response:* 1 minute 48 seconds to 4 hours.

*Estimated Total Annual Burden Hours:* 1,021,822 hours.

*Needs and Uses:* During the processing for an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Submission of priority documents and Amendments.

*OMB Number:* 0651–0032.

*Title:* Initial Patent Application.

*Form Number:* PTO/SB/01–07/13PCT/16–19/29/101–110.

*Type of Review:* Approved through April of 2003.

*Affected Public:* Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, farms, Federal Government, and State, Local, or Tribal Governments.

*Estimated Number of Respondents:* 319,350.

*Estimated Time Per Response:* 24 minutes to 10 hours and 75 minutes.

*Estimated Total Annual Burden Hours:* 2,984,360 hours.

*Needs and Uses:* The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, Provisional Application Coversheet, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in processing and examination of the application.

*OMB Number:* 0651–0033.

*Title:* Post Allowance and Refiling.

*Form Numbers:* PTO/SB/44/50/51, 51S/52/53/55/56/57/58, PTOL–85B.

*Type of Review:* Approved through January of 2004.

*Affected Public:* Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, farms, State, Local and Tribal Governments, and Federal Government.

*Estimated Number of Respondents:* 205,480.

*Estimated Time Per Response:* 0.03 (2 minutes) to 2.0 (2 hours).

*Estimated Total Annual Burden Hours:* 63,640 hours.

*Needs and Uses:* This collection of information is required to administer the patent laws pursuant to Title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

*Comments are invited on:* (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (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 to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, Washington, DC 20231, or to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503, (Attn: PTO Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

**List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents,

Reporting and record keeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is proposed to be amended as follows:

## PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2).

2. Section 1.3 is revised to read as follows:

### § 1.3 Business to be conducted with decorum and courtesy.

Applicants and their attorneys or agents are required to conduct their business with the United States Patent and Trademark Office with decorum and courtesy. Papers presented in violation of this requirement will be submitted to the Director and will not be entered. Complaints against examiners and other employees must be made in correspondence separate from other papers.

3. Section 1.9 is amended by adding paragraph (R) to read as follows:

### § 1.9 Definitions.

* * * * *

(R) Paper as used in this Chapter means a document that may exist in electronic, computer readable form or in physical form, and therefore does not necessarily imply physical sheets of paper.

* * * * *

4. Section 1.14 is revised to read as follows:

### § 1.14 Patent applications preserved in confidence.

(a) *Confidentiality of patent application information.* Patent applications that have not been published under 35 U.S.C. 122(b) are generally preserved in confidence pursuant to 35 U.S.C. 122(a). Information concerning the filing, pendency, or subject matter of an application for patent, including status information, and access to the application, will only be given to the public as set forth in § 1.11 or in this section.

(1) Records associated with patent applications other than international applications (see paragraph (h) of this section for international applications) shall be available in the following situations:

(i) *Patented applications and Statutory Invention Registrations.* The file of an application that has issued as a patent or published as a statutory invention registration is available to the public as set forth in § 1.11(a). A copy of the patent application-as-filed, the file contents of the application, or a specific document in the file of such an application shall be provided upon request and payment of the appropriate fee set forth in § 1.19(b).

(ii) *Published abandoned applications.* The file of an abandoned application that has been published as a patent application publication is available to the public as set forth in § 1.11(a). A copy of the application-as-filed, the file contents of the published application, or a specific document in the file of the published application shall be provided to any person upon request, and payment of the appropriate fee set forth in § 1.19(b).

(iii) *Published pending applications.* A copy of the application-as-filed, the file contents of the published application, or a specific document in the file of a pending application that has been published as a patent application publication shall be provided to any person upon request, and payment of the appropriate fee set forth in § 1.19(b). If a redacted copy of the application was used for the patent application publication, the copy of the specification, drawings, and papers may be limited to a redacted copy. The Office will not provide access to the paper file of a pending application that has been published, except as provided in paragraph (c) or (i) of this section.

(iv) *Unpublished abandoned applications (including provisional applications) that are referenced in certain documents.* The file contents of an abandoned application that is referenced in a U.S. patent, Statutory Invention Registration, a U.S. patent application publication, or an international patent application publication of an international application that was published in accordance with PCT Article 21(2) are available to the public, if a written request is submitted. Also, the file contents of an abandoned application that is relied upon under 35 U.S.C. 119(e), 120, 121, or 365 by an application that has issued as a U.S. patent, or in an application that has published as a Statutory Invention Registration, U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2) are available to the public, if a written request is submitted. A copy of the application-as-filed, the file contents of the application, or a specific document in the file of the application shall be provided to any person upon written request, and payment of the appropriate fee (§ 1.19(b)).

(v) *Unpublished pending applications that are referenced in certain documents.* A copy of the application-as-filed of a pending application that is referenced in a U.S. patent, Statutory Invention Registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2) shall be provided to any person upon written request, including the fee set forth in § 1.19(b)(1). Also, a copy of the application-as-filed of a pending application that is relied upon under 35 U.S.C. 119(e), 120, 121, or 365 by an application that has issued as a U.S. patent, or in an application that has published as a Statutory Invention Registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2) shall be provided to any person upon written request, including the fee set forth in § 1.19(b)(1). Until the application is abandoned, patented, or published as a Statutory Invention Registration or a U.S. patent application publication, a granted petition for access (see paragraph (i) of this section), or a power to inspect (see paragraph (c) of this section) is necessary to obtain the file of the application.

(vi) *Applications that were not published or patented, and are not referenced in a U.S. patent, a Statutory Invention Registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2), or relied upon under 35 U.S.C. 119(e), 120, 121, or 365 in an application that has issued as a U.S. patent, or been published as a Statutory Invention Registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2).* Applications that were not published or patented, and are not referenced in a U.S. patent, a Statutory Invention Registration, a U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2) are not available to the public, unless the application that issued as the U.S. patent or was published as the Statutory Invention Registration, U.S. patent application publication, or an international patent application publication that was published in accordance with PCT Article 21(2) claims the benefit of the application under 35 U.S.C. 119(e), 120, 121, or 365.

A granted petition for access (see paragraph (i) of this section), or a power to inspect (see paragraph (c) of this section) is necessary to obtain the application, or a copy of the application.

(2) Information concerning a patent application may be communicated to the public if the patent application is identified in paragraphs (a)(1)(i) through (a)(1)(v) of this section. The information that may be communicated to the public (*i.e.*, status information) includes:

(i) Whether the application is pending, abandoned, or patented;

(ii) Whether the application has been published under 35 U.S.C. 122(b);

(iii) The application ''numerical identifier'' which may be:

(A) The eight-digit application number (the two-digit series code plus the six-digit serial number); or

(B) The six-digit serial number plus any one of the filing date of the national application, the international filing date, or date of entry into the national stage; and

(iv) Whether an application claims the benefit of the application (*i.e.*, whether there are any applications that claim the benefit of the filing date under 35 U.S.C. 119(e), 120, 121 or 365 of the application), and if there are any such applications, the numerical identifier of the application, the specified relationship between the applications (*e.g.*, continuation), whether the application is pending, abandoned or patented, and whether the application has been published under 35 U.S.C. 122(b).

(b) *Electronic access to an application.* Where a copy of the application papers or access to the application is available pursuant to paragraphs (a)(1)(i) through (a)(1)(v) of this section, the Office may at its discretion provide access only to an electronic copy of the specification, drawings, and file contents of the application.

(c) *Power to inspect a pending or abandoned application.* Access to an application shall be provided to any person if the application file is available, and the application contains written authority (*e.g.*, a power to inspect) granting access to such person. The written authority must be signed by:

(1) An applicant;

(2) An attorney or agent of record;

(3) An authorized official of an assignee of record (made of record pursuant to § 3.71 of this chapter); or

(4) A registered attorney or agent named in the papers accompanying the application papers filed under § 1.53 or the national stage documents filed under § 1.495, if an executed oath or declaration pursuant to § 1.63 or § 1.497 has not been filed.

(d) *Applications reported to Department of Energy.* Applications for patents which appear to disclose, purport to disclose or do disclose inventions or discoveries relating to atomic energy are reported to the Department of Energy, which Department will be given access to the applications. Such reporting does not constitute a determination that the subject matter of each application so reported is in fact useful or is an invention or discovery, or that such application in fact discloses subject matter in categories specified by 42 U.S.C. 2181(c) and (d).

(e) *Unpublished applications provided to other Intellectual Property Offices.* Before a patent application is published or otherwise becomes available to the public pursuant to paragraphs (a)(1)(i) through (a)(1)(iv) of this section, the Office may, pursuant to an agreement between the Office and another Intellectual Property (IP) Office, provide the other IP Office with access to the electronic record of the application without charge to applicant, if applicant consents. After an application has been published, such consent is not required.

(f) *Decisions by the Director or the Board of Patent Appeals and Interferences.*

(1) Any action of the Board of Patent Appeals and Interferences, or any decision on petition, may be published or made available for public inspection without applicant's or patent owner's permission if rendered in a file open to the public pursuant to § 1.11 or available pursuant to § 1.14(e)(2), in an application that has been published in accordance with §§ 1.211 through 1.221, or in an application claiming benefit of an earlier filing date under 35 U.S.C. 119(a)–(d), 120, 121 or 365 of an application that has been published or patented.

(2) Any action of the Board of Patent Appeals and Interferences, or any decision on petition not publishable under paragraph (f)(1) of this section, may be published or made available for public inspection if the Director believes the action or decision involves an interpretation of patent laws or regulations that would be of important precedential value; and the applicant, or any party involved in the interference, does not within two months after being notified of the intention to make the action or decision public, object in writing on the ground that the decision discloses a trade secret or other confidential information and states that such information is not otherwise publicly available. If an action or decision discloses such information, the applicant or party shall identify the deletions in the text of the action or decision considered necessary to protect the information. If the applicant or the party considers that the entire action or decision must be withheld from the public to protect such information, the applicant or party must explain why. Applicants or parties will be given time, not less than twenty days, to request reconsideration and seek court review before any portions of actions or decisions are made public over their objection. *See* § 2.27 for trademark applications.

(g) *Publication pursuant to § 1.47.* Information as to the filing of an application will be published in the Official Gazette in accordance with § 1.47(c).

(h) *International applications.* (1) Copies of international application files for international applications which designate the U.S. and which have been published in accordance with PCT Article 21(2), or copies of a document in such application files, will be furnished in accordance with PCT Articles 30 and 38 and PCT Rules 94.2 and 94.3, upon written request including a showing that the publication of the application has occurred and that the U.S. was designated, and upon payment of the appropriate fee (*see* § 1.19(b)), if:

(i) With respect to the Home Copy (the copy of the international application kept by the Office in its capacity as the Receiving Office, see PCT Article 12(1)), the international application was filed with the U.S. Receiving Office;

(ii) With respect to the Search Copy (the copy of the international application kept by the Office in its capacity as the International Preliminary Searching Authority, see PCT Article 12(1)), the U.S. acted as the International Searching Authority; or

(iii) With respect to the Examination Copy (the copy of an international application kept by the Office in its capacity as the International Preliminary Examining Authority), the United States acted as the International Preliminary Examining Authority, an International Preliminary Examination Report has issued, and the United States was elected.

(2) A copy of an English language translation of a publication of an international patent application which has been filed in the United States Patent and Trademark Office pursuant to 35 U.S.C. 154(2)(d)(4) will be furnished upon written request including a showing that the publication of the application in

accordance with PCT Article 21(2) has occurred and that the U.S. was designated, and upon payment of the appropriate fee (§ 1.19(b)(4)).

(3) Access to international application files for international applications which designate the U.S. and which have been published in accordance with PCT Article 21(2), or copies of a document in such application files, will be furnished in accordance with PCT Articles 30 and 38 and PCT Rules 94.2 and 94.3, upon written request including a showing that the publication of the application has occurred and that the U.S. was designated.

(4) In accordance with PCT Article 30, copies of an international application-as-filed under paragraph (a) of this section will not be provided prior to the international publication of the application pursuant to PCT Article 21(2).

(5) Access to international application files under paragraphs (a)(1)(i)–(iv) and (h)(3) of this section will not be permitted with respect to the Examination Copy in accordance with PCT Article 38.

(i) *Access or copies in other circumstances.* The Office, either *sua sponte* or on petition, may also provide access or copies of all or part of an application if necessary to carry out an Act of Congress or if warranted by other special circumstances. Any petition by a member of the public seeking access to, or copies of, all or part of any pending or abandoned application preserved in confidence pursuant to paragraph (a) of this section, or any related papers, must include:

(1) The fee set forth in § 1.17(h); and

(2) A showing that access to the application is necessary to carry out an Act of Congress or that special circumstances exist which warrant petitioner being granted access to all or part of the application.

5. Section 1.17 is amended by revising paragraph (h) to read as follows:

**§ 1.17 Patent application and reexamination processing fees.**

* * * * *

(h) For filing a petition under one of the following sections which refers to this paragraph—$130.00

§ 1.12—for access to an assignment record
§ 1.14—for access to an application
§ 1.47—for filing by other than all the inventors or a person not the inventor
§ 1.53(e)—to accord a filing date
§ 1.59—for expungement of information
§ 1.84—for accepting color drawings or photographs
§ 1.91—for entry of a model or exhibit
§ 1.102—to make an application special
§ 1.103(a)—to suspend action in an application
§ 1.138(c)—to expressly abandon an application to avoid publication
§ 1.182—for decision on a question not specifically provided for
§ 1.183—to suspend the rules
§ 1.295—for review of refusal to publish a statutory invention registration
§ 1.313—to withdraw an application from issue
§ 1.314—to defer issuance of a patent
§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent
§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent
§ 1.644(e)—for petition in an interference
§ 1.644(f)—for request for reconsideration of a decision on petition in an interference
§ 1.666(b)—for access to an interference settlement agreement
§ 1.666(c)—for late filing of interference settlement agreement
§ 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term
§ 5.12—for expedited handling of a foreign filing license
§ 5.15—for changing the scope of a license
§ 5.25—for retroactive license

* * * * *

6. Section 1.19 is amended by revising paragraph (b)(1) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(b) * * *

(1) Certified or uncertified copy of the paper portion of patent application as filed, except for a certified copy provided pursuant to an agreement between the Office and another Intellectual Property (IP) Office when the certified copy is provided to the other IP Office in electronic form and when written authorization under 35 U.S.C. 122(a) to permit access to file information by the other IP Office receiving the priority document is given by applicant for which there is no fee:

(i) Regular service—$15.00

(ii) Expedited regular service—$30.00

* * * * *

7. Section 1.52 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 1.52 Language, paper, writing, margins, compact disc specifications.**

(a) Papers that are to become a part of the permanent United States Patent and Trademark Office records in the file of a patent application or a reexamination proceeding.

(1) All papers, other than drawings, that are submitted on paper or by facsimile transmission, and are to become a part of the permanent United States Patent and Trademark Office records in the file of a patent application or reexamination proceeding, must be on sheets of paper that are the same size, not permanently bound together, and:

(i) Flexible, strong, smooth, non-shiny, durable, and white;

(ii) Either 21.0 cm by 29.7 cm (DIN size A4) or 21.6 cm by 27.9 cm (8½ by 11 inches), with each sheet including a top margin of at least 2.0 cm (¾ inch), a left side margin of at least 2.5 cm (1 inch), a right side margin of at least 2.0 cm (¾ inch), and a bottom margin of at least 2.0 cm (¾ inch);

(iii) Written on only one side in portrait orientation;

(iv) Plainly and legibly written either by a typewriter or machine printer in permanent dark ink or its equivalent; and

(v) Presented in a form having sufficient clarity and contrast between the paper and the writing thereon to permit the direct reproduction of readily legible copies in any number by use of photographic, electrostatic, photo-offset, and microfilming processes and electronic capture by use of digital imaging and optical character recognition.

(2) All papers that are submitted on paper or by facsimile transmission and are to become a part of the permanent records of the United States Patent and Trademark Office should have no holes in the sheets as submitted.

(3) The provisions of this paragraph and paragraph (b) of this section do not apply to the pre-printed information on paper forms provided by the Office, or to the copy of the patent submitted on paper in double column format as the specification in a reissue application or request for reexamination.

(4) See § 1.58 for chemical and mathematical formulae and tables, and § 1.84 for drawings.

(5) If papers that are submitted on paper or by facsimile transmission do not comply with paragraph (a)(1) of this section and are submitted as part of the permanent record, other than the drawings, applicant, or the patent owner, or the requester in a reexamination proceeding, will be notified and given a period of time within which to provide substitute papers that comply with paragraph (a)(1) of this section in order to avoid abandonment of the application in the

case of an applicant for patent, termination of proceedings in the case of a patent owner in a reexamination proceeding, or refusal of consideration of the papers in the case of a third party requester in a reexamination proceeding.

(6) Papers that are submitted electronically to the Office must be formatted and transmitted in compliance with the Office's electronic filing system requirements.

(7) If the papers that are submitted electronically to the Office do not comply with paragraph (a)(6) of this section, the applicant, or the patent owner, or the requester in a reexamination proceeding, will be notified and given a period of time within which to provide substitute papers that comply with paragraph (a)(6) of this section in order to avoid abandonment of the application in the case of an applicant for patent, termination of proceedings in the case of a patent owner in a reexamination proceeding, or refusal of consideration of the papers in the case of a third party requester in a reexamination proceeding.

(b) The application (specification, including the claims, drawings, and oath or declaration) or reexamination proceeding and any amendments or corrections to the application or reexamination proceeding.

(1) The application or proceeding and any amendments or corrections to the application (including any translation submitted pursuant to paragraph (d) of this section) or proceeding, except as provided for in § 1.69 and paragraph (d) of this section, must:

(i) Comply with the requirements of paragraph (a) of this section; and

(ii) Be in the English language or be accompanied by a translation of the application and a translation of any corrections or amendments into the English language together with a statement that the translation is accurate.

(2) The specification (including the abstract and claims) for other than reissue applications and reexamination proceedings, and any amendments for applications (including reissue applications) and reexamination proceedings to the specification, except as provided for in §§ 1.821 through 1.825, must have:

(i) Lines that are 1½ or double spaced;

(ii) Text written in a nonscript type font (*e.g.*, Arial, Times Roman, or Courier) lettering style having capital letters which are at least 0.21 cm (0.08 inch) high; and

(iii) Only a single column of text.

(3) The claim or claims must commence on a separate physical sheet or electronic page (§ 1.75(h)).

(4) The abstract must commence on a separate physical sheet or electronic page or be submitted as the first page of the patent in a reissue application or reexamination proceeding (§ 1.72(b)).

(5) Other than in a reissue application or reexamination proceeding, the pages of the specification including claims and abstract must be numbered consecutively, starting with 1, the numbers being centrally located above or preferably, below, the text.

(6) Other than in a reissue application or reexamination proceeding, the paragraphs of the specification, other than in the claims or abstract, may be numbered at the time the application is filed, and should be individually and consecutively numbered using Arabic numerals, so as to unambiguously identify each paragraph. The number should consist of at least four numerals enclosed in square brackets, including leading zeros (*e.g.*, [0001]). The numbers and enclosing brackets should appear to the right of the left margin as the first item in each paragraph, before the first word of the paragraph, and should be highlighted in bold. A gap, equivalent to approximately four spaces, should follow the number. Nontext elements (*e.g.*, tables, mathematical or chemical formulae, chemical structures, and sequence data) are considered part of the numbered paragraph around or above the elements, and should not be independently numbered. If a nontext element extends to the left margin, it should not be numbered as a separate and independent paragraph. A list is also treated as part of the paragraph around or above the list, and should not be independently numbered. Paragraph or section headers (titles), whether abutting the left margin or centered on the page, are not considered paragraphs and should not be numbered.

(7) If papers that do not comply with paragraphs (b)(1) through (b)(5) of this section are submitted as part of the application, the applicant, or patent owner, or requester in a reexamination proceeding, the applicant, patent owner or requester in a reexamination proceeding will be notified and given a period of time within which to provide substitute papers that comply with paragraphs (b)(1) through (b)(5) of this section in order to avoid abandonment of the application in the case of an applicant for patent, termination of proceedings in the case of a patent owner in a reexamination proceeding, or refusal of consideration of the papers in the case of a third party requester in a reexamination proceeding.

* * * * *

8. Section 1.59 is revised to read as follows:

**§ 1.59 Expungement of information or copy of papers in application file.**

(a)(1) Information in an application will not be expunged, except as provided in paragraph (b) of this section.

(2) Information forming part of the original disclosure (*i.e.*, written specification including the claims, drawings, and any preliminary amendment specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175) will not be expunged from the application file.

(b) An applicant may request that the Office expunge information, other than what is excluded by paragraph (a)(2) of this section, by filing a petition under this paragraph. Any petition to expunge information from an application must include the fee set forth in § 1.17(h) and establish to the satisfaction of the Director that the expungement of the information is appropriate.

(c) Upon request by an applicant and payment of the fee specified in § 1.19(b), the Office will furnish copies of an application, unless the application has been disposed of (see §§ 1.53(e), (f) and (g)). The Office cannot provide or certify copies of an application that has been disposed of.

9. Section 1.71 is amended by adding paragraph (f) to read as follows:

**§ 1.71 Detailed description and specification of the invention.**

* * * * *

(f) The specification must commence on a separate sheet and each sheet including part of the specification may not include other parts of the application.

10. Section 1.72 is amended by revising paragraph (b) to read as follows:

**§ 1.72 Title and abstract.**

* * * * *

(b) A brief abstract of the technical disclosure in the specification must commence on a separate sheet, preferably following the claims, under the heading ''Abstract'' or ''Abstract of the Disclosure.'' The sheet or sheets presenting the abstract may not include other parts of the application. The abstract in an application filed under 35 U.S.C. 111 may not exceed 150 words in length. The purpose of the abstract is to enable the United States Patent and Trademark Office and the public generally to determine quickly from a

cursory inspection the nature and gist of the technical disclosure.

* * * * *

11. Section 1.75 is amended by revising paragraph (h) to read as follows:

**§ 1.75 Claim(s).**

* * * * *

(h) The claim or claims must commence on a separate sheet and any sheet including a claim or portion of a claim may not contain any other parts of the application.

* * * * *

12. Section 1.97 is amended by revising paragraphs (b)(3), (b)(4) and (c) to read as follows:

**§ 1.97 Filing of information disclosure statement.**

* * * * *

(b) * * *

(3) Before the day of the mailing of a first Office action on the merits; or

(4) Before the day of the mailing of a first Office action after the filing of a request for continued examination under § 1.114.

(c) An information disclosure statement shall be considered by the Office if filed after the period specified in paragraph (b) of this section, provided that the information disclosure statement is filed before the day of the mailing date of any of a final action under § 1.113, a notice of allowance under § 1.311, or an action that otherwise closes prosecution in the application, and it is accompanied by either:

(1) The statement specified in paragraph (e) of this section; or

(2) The fee set forth in § 1.17(p).

* * * * *

13. Section 1.98 is amended by adding paragraph (e) to read as follows:

**§ 1.98 Content of information disclosure statement.**

* * * * *

(e) The requirement in paragraph (a)(2)(i) of this section for a copy of all listed U.S. patents and U.S. patent application publications does not apply to any information disclosure statement submitted in compliance with the Office's electronic filing system.

14. Section 1.99 is amended by revising paragraphs (d) and (e) to read as follows:

**§ 1.99 Third-party submission in published application.**

* * * * *

(d) A submission under this section shall not include any explanation of the patents or publications, or any other information. The Office will not enter such explanation or information if included in a submission under this section. A submission under this section is also limited to ten total patents or publications.

(e) A submission under this section must be filed within two months from the date of publication of the application (§ 1.215(a)) or prior to the mailing of a notice of allowance (§ 1.311), whichever is earlier. Any submission under this section not filed within this period is permitted only when the patents or publications could not have been submitted to the Office earlier, and must also be accompanied by the processing fee set forth in § 1.17(i). A submission by a member of the public to a pending published application that does not comply with the requirements of this section will not be entered.

* * * * *

15. Section 1.121 is revised to read as follows:

**§ 1.121 Manner of making amendments in applications.**

(a) *Amendments in applications, other than reissue applications.* Amendments in applications, other than reissue applications, are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made.

(b) *Specification.* Amendments to the specification other than the claims and computer listings (§ 1.96) and sequence listings (§ 1.825) must be made by replacement paragraph, replacement section or substitute specification in the manner specified in this section.

(1) *Amendment by instruction to delete, replace, or add a paragraph. Amendments to the specification may be made by submitting:*

(i) An instruction, which unambiguously identifies the location, to delete one or more paragraphs of the specification, replace a deleted paragraph with one or more replacement paragraphs, or add one or more paragraphs; and

(ii) Any replacement or added paragraph(s) marked-up to show all the changes relative to the previous version of the paragraph(s). The changes must be shown by strike-through (for deleted matter) or underlining (for added matter).

(2) *Amendment by replacement section.* If the sections of the specification contain section headings as provided in § 1.77(b), § 1.154(b), or § 1.163(c), amendments to the specification, other than the claims, may be made by submitting:

(i) A reference to the section heading along with an instruction to delete that section of the specification and to replace such deleted section with a replacement section; and

(ii) A replacement section marked-up to show all changes relative to the previous version of the section. The changes must be shown by strike-through (for deleted matter) or underlining (for added matter).

(3) *Amendment by substitute specification.* The specification, other than the claims, may also be amended by submitting:

(i) An instruction to replace the specification; and

(ii) A substitute specification in compliance with § 1.125(c).

(4) *Reinstatement*: Deleted matter may be reinstated only by a subsequent amendment presenting the previously deleted matter.

(5) Presentation: Instructions for entry of replacement paragraphs or sections must be provided with an unambiguous and precise location. Deletion of a paragraph or section is permitted by instruction only; no text to be canceled should be presented. Once a paragraph, section, or specification is amended in a first amendment document, the paragraph, section or specification shall not be re-presented in successive amendment documents unless it is amended again or a substitute specification is provided.

(c) *Claims.* Amendments to a claim must be made by rewriting the entire claim with all changes (*e.g.*, additions, deletions, modifications) as indicated in this section. Each amendment document that includes a change to an existing claim, or submission of a new claim, must include a complete listing of all claims in the application. The listing will serve to replace all prior versions of the text of the claims (except for withdrawn claims) in the application. The text of all pending claims (except for withdrawn claims) must be submitted in a single amendment document each time any claim is amended. The status of each of the claims in the application, including any previously canceled or withdrawn claims, must be indicated in each amendment document. Status is indicated by a parenthetical expression following the claim number and should be indicated by use of one of the following identifiers: (Original), (Currently amended), (Previously amended), (Canceled), (Withdrawn), (Previously added), (New), (Reinstated—formerly claim #__), (Previously reinstated), (Re-presented—formerly dependent claim # __), or (Previously re-presented). Only claims of status ''currently amended'' shall include markings.

(1) Currently amended claims: All claims being currently amended in an amendment paper shall be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The changes in any amended claim shall be shown by strike-through (for deleted matter) or underlining (for added matter). Only claims of status ''currently amended'' shall include markings.

(2) Original, previously amended, or previously added claims: The text of pending claims not being currently amended shall be presented in each amendment document in clean version, *i.e.*, without any markings in the presentation of clean text. The presentation of clean text in any claim will constitute an assertion that it has not been changed relative to the immediate prior version. The text of canceled and withdrawn claims shall not be presented, but must be indicated by only claim number and status.

(3) Cancelled and new (added) claims: A claim is canceled by providing an instruction to cancel the claim by claim number. No markup shall be presented. Listing a claim as canceled will constitute an instruction to cancel the claim. Any claims added by amendment must be indicated as (new), and shall not be underlined.

(4) When one or more claims are amended or added in an amendment document, all of the claims shall be presented in a listing in ascending numerical order. Consecutive canceled or withdrawn claims may be aggregated into one statement (*e.g.*, Claims 1–5 (canceled)). The text of the claims shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(5) A claim canceled by amendment (deleted in its entirety) may be reinstated only by a subsequent amendment presenting the claim as a new claim with a new claim number.

(d) *Drawings.* Application drawings are amended in the following manner: Any changes to the application drawings must be in compliance with § 1.84 and must be submitted as replacement sheets as an attachment to the amendment document. Any replacement sheets shall include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is amended. Applicant shall explain in detail the changes made beginning on a separate sheet in the drawing amendments or remarks section of the amendment paper.

(1) The applicant may include a marked-up copy of one or more of the figures being amended indicating the changes being made.

(2) The applicant shall include a marked-up copy of any figure that has been amended indicating the changes being made when required by the examiner.

(e) *Disclosure consistency.* The disclosure must be amended, when required by the Office, to correct inaccuracies of description and definition, and to secure substantial correspondence between the claims, the remainder of the specification, and the drawings.

(f) *No new matter.* No amendment may introduce new matter into the disclosure of an application.

(g) *Exception for examiner's amendments.* Changes to the specification, including the claims, of an application made by the Office in an examiner's amendment may be made by specific instructions to insert or delete subject matter set forth in the examiner's amendment by identifying the precise point in the specification or the claim(s) where the insertion or deletion is to be made. Compliance with paragraphs (b)(1), (b)(2), (c) or (c)(1) to (c)(5) is not required.

(h) *Amendment sections.* Each section of an amendment document must begin on a separate sheet.

(i) *Amendments in reissue applications.* Any amendment to the description and claims in reissue applications must be made in accordance with § 1.173.

(j) *Amendments in reexamination proceedings.* Any proposed amendment to the description and claims in patents involved in reexamination proceedings must be made in accordance with § 1.530.

(k) *Amendments in provisional applications.* Amendments in provisional applications are not normally made. If an amendment is made to a provisional application, however, it must comply with the provisions of this section. Any amendments to a provisional application shall be placed in the provisional application file but may not be entered.

16. Section 1.125 is proposed to be amended by revising paragraphs (b) and (c) to read as follows:

**§ 1.125 Substitute specification.**

* * * * *

(b) Subject to § 1.312, a substitute specification, excluding the claims, may be filed at any point up to payment of the issue fee if it is accompanied by a statement that the substitute specification includes no new matter.

(c) A substitute specification submitted under this section must be submitted with markings showing all the changes (underlining to indicate subject matter being added and strike-through indicating subject matter being deleted) relative to the immediate prior version of the specification of record. An accompanying clean version (without markings) must also be supplied. Numbering the paragraphs of the specification of record is not considered a change that must be shown pursuant to this paragraph.

* * * * *

17. Section 1.823 is proposed to be amended by revising paragraph (a)(1) to read as follows:

**§ 1.823 Requirements for nucleotide and/or amino acid sequences as part of the application.**

(a)(1) If the ''Sequence Listing'' required by § 1.821(c) is submitted on paper: The ''Sequence Listing,'' setting forth the nucleotide and/or amino acid sequence and associated information in accordance with paragraph (b) of this section, must begin on a new page and must be titled ''Sequence Listing.'' The pages of the ''Sequence Listing'' preferably should be numbered independently of the numbering of the remainder of the application. Each page of the ''Sequence Listing'' shall contain no more than 66 lines and each line shall contain no more than 72 characters. The sheet or sheets presenting a sequence listing may not include other parts of the application. A fixed-width font should be used exclusively throughout the ''Sequence Listing.''

* * * * *

Dated: March 19, 2003.

**James E. Rogan,**

*Under Secretary of Commerce for Intellectual Property and, Director of the United States Patent and Trademark Office.*

[FR Doc. 03–6972 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–16–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[SIP No. UT–001–0048, UT–001–0049; FRL–7472–4]**

## Approval and Promulgation of Air Quality Implementation Plans; Utah; SIP Renumbering

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Governor of Utah on June 27, 1994 and April 28, 2000. EPA is also proposing to approve Supplemental Administrative Documentation submitted on December 31, 2002. The June 27, 1994 submittal revises the numbering and format of Utah's State Implementation Plan (SIP). The April 28, 2000 submittal contains non-substantive changes to correct minor errors in the June 27, 1994 submittal. The December 31, 2002 submittal also contains non-substantive changes to the June 27, 1994 submittal. The intended effect of this action is to make these provisions federally enforceable. In addition, we will be acting on parts of these submittals at a later date. This action is being taken under section 110 of the Clean Air Act.

**DATES:** Written comments must be received on or before April 24, 2003.

**ADDRESSES:** Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114.

**FOR FURTHER INFORMATION CONTACT:** Laurel Dygowski, EPA, Region 8, (303) 312–6144.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we'' or ''our'' is used means EPA.

## I. Evaluation of State's June 27, 1994, April 28, 2000 and December 31, 2002 Submittals

In this document we are proposing to approve two SIP revisions submitted by the Governor of Utah on June 27, 1994 and April 28, 2000. Also, we are proposing to approve Supplemental Administrative Documentation submitted by the State on December 31, 2002. The June 27, 1994 submittal revises the numbering and format of Utah's SIP. The renumbering of the Utah SIP allows for a consistent numbering system. The April 28, 2000 and December 31, 2002 submittals contain non-substantive changes to correct minor errors in the June 27, 1994 submittal. In addition, on October 3, 2002, the State submitted a letter from Richard W. Sprott, Director, Division of Air Quality, correcting other non-substantive changes to the June 27, 1994 submittal. The October 3, 2002 letter was submitted to address typographical errors and missing pages in the January 27, 1994 submittal.

In this notice, we are putting sections of the SIP into categories based on the action we are taking on that section of the SIP. The first category contains sections that have been renumbered and contain no substantive changes to the text of the section. We are proposing to approve these sections into the SIP. The second category includes sections of the SIP that have been renumbered and that we are proposing to take no action on because they have never been approved into the SIP or they have been superceded by later submittals that have been approved into the SIP. The third category consists of sections on which we propose to take action on in a separate notice.

### *A. Category 1*

Based on the June 27, 1994, April 28, 2000 and December 31, 2002 submittals, we are proposing to approve the following sections of the Utah SIP because they have only been renumbered and contain no substantive changes to the text of the rule. We are proposing that the following renumbered SIP sections replace the prior numbered SIP sections in the federally approved SIP along with any nonsubstantive changes: Section I—Legal Authority; Section II—Review of New and Modified Air Pollution Sources; Section III—Source Surveillance; Section IV; Section V—Resources; Section VI—Intergovernmental Relations; Section VII—Prevention of Air Pollution Emergency Episodes; Section VIII—Prevention of Significant Deterioration; Section IX—Control Measures for Area and Point Sources (except for Part A, Part D and Part H); Section XI—Appendix 1; Section XI—Appendix 2; Section XII—Involvement; Section XIII—Analysis of Plan Impact; Section XIV—Emission Inventory Development; Section XV—Title 19, Chapter 2 Utah Code Annotated, 1993; Section XVI—Public Notification; Section XVII—Visibility Protection; Section XVIII—Demonstration of GEP Stack Height; and Section XIX—Small Business Assistance Program.

The following table cross references the renumbered and prior numbered SIP sections. The table identifies the renumbered SIP sections we are proposing to approve as replacing the prior numbered SIP sections.

STATE IMPLEMENTATION PLAN

[Table of Corresponding Sections]

| Title | Renumbered SIP Section | Prior numbered SIP Section |
|---|---|---|
| Legal Authority | Section I | Section 1. |
| Review of New and Modified Air Pollution Sources | Section II | Section 2. |
| Source Surveillance | Section III | Section 3. |
| Ambient Air Monitoring Program | Section IV | Section 4. |
| Resources | Section V | Section 5. |
| Intergovernmental Cooperation | Section VI | Section 6. |
| Prevention of Air Pollution Emergency Episodes | Section VII | Section 7. |
| Prevention of Significant Deterioration | Section VIII | Section 8. |
| Control Measures for Area and Point Sources | Section IX | Section 9. |
| Sulfur Dioxide | Part B | Part B. |
| Carbon Monoxide | Part C | Part C. |
| Nitrogen Dioxide | Part E | Part E. |
| Lead | Part F | Part F. |
| Fluoride | Part G | Part G. |
| Mountainlands Association of Governments | XI, App. 1 | Section 9, App. A. |
| Wasatch Front Regional Council | XI, App. 2 | Section 9, App. B. |
| Involvement | Section XII | Section 10. |

STATE IMPLEMENTATION PLAN—Continued

[Table of Corresponding Sections]

| Title | Renumbered SIP Section | Prior numbered SIP Section |
|---|---|---|
| July 27, 1978 contract: Utah Dept. of Social Services and Mountainlands Assoc. of Govt. | XII, App. 1 | Exhibit 10.1a. |
| July 21, 1978 contract: Utah Dept. of Social Services and Wasatch Front Regional Council. | XII, App. 2 | Exhibit 10.1b. |
| Analysis of Plan Impact | Section XIII | Section 11. |
| Comprehensive Emission Inventory | Section XIV | Section 12. |
| Utah Code Title 19, Chapter 2 | Section XV | Section 13. |
| Public Notification | Section XVI | Section 14. |
| Visibility Protection | Section XVII | Section 15. |
| Demonstration of GEP Stack Height | Section XVIII | Section 16. |
| Small Business Assistance Program | Section XIX | Section 17. |

*B. Category 2*

Category 2 consists of sections that we are proposing to take no action on because the sections have never been approved into the SIP or the sections have been superceded by later submittals that EPA has already approved into the SIP.

1. Section XX—Committal SIP

Section XX has never been approved into the SIP. Section XX committed the State to adopt certain measures to control ozone, but the committal SIP is irrelevant since the State subsequently submitted the Utah Ozone Maintenance Plan and the EPA approved it at (July 17, 1997, 62 FR 38213). Additionally, on June 17, 1998, the State submitted a SIP revision requesting the repeal of the Committal SIP. In a **Federal Register** notice, the EPA states that it will not take any action on repeal of the Committal SIP since it was never approved into the SIP (May 20, 2002, 67 FR 35442).

2. Sections That Have Been Superceded

Since the State's June 27, 1994 submittal, the State has made changes to portions of the SIP which EPA has approved. Since we have already approved these provisions, the approved sections supercede the June 27, 1994 submittal. The sections that we are proposing to take no action on because they supercede the June 27, 1994 submittal and have already been approved into the SIP are Section IX, Part D (approved on July 17, 1997, 62 FR 38213); Section X (approved on July 17, 1997, 62 FR 38213 and September 12, 2002, 67 FR 57744); and Section XI (approved on June 14, 2000, 65 FR 37286). However, we are approving Appendix 1 and Appendix 2 for Section XI, as stated above.

*C. Category 3*

Category 3 consists of those sections that we will act on at a later date.

1. January 27, 1994 Submittal

EPA will be acting on Section IX, Parts A and H at a later time due to the fact that there have been submittals that supercede these parts. EPA will act on Section IX, Parts A and H when it acts on the subsequent submittals related to these parts.[1]

2. April 28, 2000 Submittal

The April 28, 2000 submittal contains non-substantive changes to Section IX, Parts A and H. Since we are not acting on Section IX, Parts A and H in this notice, we will act on the April 28, 2000 non-substantive changes to Section IX, Parts A and H at a later date. The April 28, 2000 submittal also contains revisions to Utah's rules for definitions and inventories which we will be acting on in a separate action.

3. December 31, 2002 Submittal

The December 31, 2002 submittal contains non-substantive changes to Section IX, Parts A and H. Since we are not acting on Section IX, Parts A and H in this action, we will act on the December 31, 2002 non-substantive changes to Section IX, Parts A and H at a later date. The December 31, 2002 submittal also contains non-substantive changes to Section IX, Parts C.1–C.6. The non-substantive changes to Section IX, Parts C.1–C.6 are based on SIP changes that the EPA has not approved. We are proposing to act on the non-substantive changes to Section IX, Parts C.1–C.6 at a later time.

[1] The January 27, 1994 submittal contain references to Section IX Part A and Section IX Part H. We are not acting on Section IX Part A or Section IX Part H at this time. We are interpreting that when the State refers to Section IX Part A in its SIP, it is referring to Section 9.A of the prior numbered SIP, and when the State refers to Section IX Part H in its SIP, it is referring to Section 9.A, Appendix A, A1 and A2 of the prior numbered SIP, except for parts of Section IX, Part A and Part H that were approved into the SIP subsequent to the January 27, 1994 submittal (see 67 FR 78181, December 23, 2002).

*D. Category—Other*

1. December 31, 2002 Submittal

We are proposing to approve the non-substantive changes contained in the December 31, 2002 submittal to Section IX, Part C.7 and C.8, Section IX, Part D, Section XXI and Section XXII. SIP Section IX, Part C.7 and Part C.8, Section IX, Part D, Section XXI and Section XXII were not part of the January 27, 1994 submittal but were new sections adopted and approved subsequent to the January 27, 1994 submittal. These changes differ from the sections in I.B.2 of this notice that we are proposing to take no action on. Sections in I.B.2 were included as part of the January 27, 1994 submittal, but were replaced by subsequent approved SIP submittals.

**II. Proposed Action**

Based on the June 27, 1994, April 28, 2000 and December 31, 2002 submittals, we are proposing to approve the following sections of the Utah SIP because they have only been renumbered and contain no substantive changes to the text of the rule. We are proposing that the following renumbered SIP sections replace the prior numbered SIP sections in the federally approved SIP along with any non-substantive changes: Section I, Section II, Section III, Section IV, Section V and Section VI, effective 11/12/93; Section VII, effective 11/12/93, except VII.D, effective January 1, 2003; Section VIII, effective January 1, 2003; Section IX, Part B, effective 11/12/93, except the title and IX.B.3.d, effective 2/25/2000, and IX.B.3.a, IX.B.3.e, and IX.B.4, effective January 1, 2003; Section IX, Part C, effective 11/12/93, except the title, effective 2/25/2000; Section IX, Parts E, F and G, effective 11/12/93, except the titles, effective 2/25/2000; Section XI, Appendix 1 and Appendix 2, effective 11/12/93; Section XII and Section XIII, effective 11/12/93; Section

XIV, effective 11/12/93, except Table XIV.9, effective 2/25/2000; Section XV and Section XVI, effective 11/12/93; Section XVII, effective 11/12/93, except XVII.A, XVII.D and XVII.E, effective 2/25/2000; Section XVIII, effective 11/12/93, except XVIII.B, effective 2/25/2000; and Section XIX, effective 11/12/93.

We are also proposing to approve non-substantive changes to Section IX, Part C.7 and C.8, Section IX, Part D, Section XXI and Section XXII, effective January 1, 2003.

In addition, we are taking no action on certain portions of the submittals because they have never been part of the SIP or they have been superceded by other submittals approved by the EPA into the SIP. The portions of the submittals that we are taking no action on are Section XX, Section IX, Part D, Section X and Section XI.

Also, we will propose to take action on portions of the submittals in separate notices. We propose to take action on Section IX, Part A and Part H and non-substantive changes to Section IX, Parts C.1–C.6 in separate notices.

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.

## III. Statutory and Executive Order Review

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

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

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

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 13, 2003.

**Kerrigan G. Clough,**

*Deputy Regional Administrator, Region 8.*

[FR Doc. 03–7055 Filed 3–24–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 81

**[CA–283–0392; FRL–7472–6]**

## Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; 1-Hour Ozone Standard for Santa Barbara, CA

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to redesignate the Santa Barbara County area to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is also proposing to approve a 1-hour ozone maintenance plan and motor vehicle emissions budgets as revisions to the Santa Barbara portion of the California State Implementation Plan (SIP).

**DATES:** Comments on this proposed action must be received by April 24, 2003.

**ADDRESSES:** Please address your comments to: Dave Jesson, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the docket for this action at EPA's Region 9 office during normal business hours. You can also inspect copies of the submitted SIP revision at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, CA 95814;

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson, EPA Region 9,(415) 972–3957, or *Jesson.David@epa.gov*

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

## I. Background

### *A. Santa Barbara Designation, Classification, SIPs, and Attainment*

When the Clean Air Act (CAA) was amended in 1990, each area of the country that was designated nonattainment for the 1-hour ozone NAAQS, including the Santa Barbara area, was classified by operation of law as marginal, moderate, serious, severe,

or extreme depending on the severity of the area's air quality problem. The Santa Barbara County nonattainment area (''Santa Barbara'') was designated under CAA section 107 as nonattainment, and classified under CAA section 181 as moderate for the 1-hour ozone NAAQS. See 40 CFR 81.305 and 56 FR 56694 (November 6, 1991).

The Santa Barbara County Air Pollution Control District (SBCAPCD) adopted a moderate area plan, intended to demonstrate attainment by the applicable deadline of November 15, 1996. The California Air Resources Board (CARB) timely submitted the plan in 1994, but later withdrew the attainment demonstration portion, since the area continued to violate the standard in 1996. We approved the remaining portion of the plan on January 8, 1997 (62 FR 1187).

On December 10, 1997 (62 FR 65025), we determined that the area had not attained the 1-hour ozone standard by the 1996 deadline. As a result of that finding, Santa Barbara was reclassified to serious by operation of law under CAA section 181(b)(1)(A).

Upon the area's reclassification to serious, CAA sections 181(a)(1) and 182(c)(2)(A) required the State to submit a revised plan demonstrating attainment as expeditiously as practicable but no later than November 15, 1999. In response, SBCAPCD adopted and CARB submitted a plan addressing the serious area requirements. EPA fully approved this plan on August 14, 2000 (65 FR 49499).

Santa Barbara attained the 1-hour ozone NAAQS in 1999 and SBCAPCD adopted a 2001 Clean Air Plan (''2001 CAP'') on November 15, 2001, to address the Clean Air Act (CAA) section 175A provisions relating to 1-hour ozone maintenance plans. On May 29, 2002, CARB submitted the 2001 CAP, and requested that we make a finding of attainment for Santa Barbara and approve the contingency measures in the maintenance plan for the area. CARB indicated that the State would ask that we act on the remainder of the maintenance plan and redesignate the area to attainment when CARB requests our approval of an updated vehicle emissions factor model for use statewide in SIPs and transportation conformity analyses.

On August 27, 2002 (67 FR 54963), we found that the Santa Barbara County nonattainment area (''Santa Barbara area'') had attained the 1-hour ozone national ambient air quality standard (NAAQS) by the applicable deadline of November 15, 1999. In the same action, we also approved contingency measures in Santa Barbara's 2001 CAP under CAA section 110(k)(3). The proposed action contains more information on the finding of attainment and the contingency measures. 67 FR 44128, July 1, 2002.

On December 20, 2002, CARB transmitted for approval the State's latest update to the California-specific motor vehicle emissions model, known as EMFAC2002 (letter from Michael P. Kenny, CARB Executive Officer, to Jack Broadbent, Director, Air Division, EPA Region 9). On December 19, 2002, SBCAPCD adopted a minor revision to the 2001 CAP (''Final 2001 CAP''), amending the emissions inventory, maintenance demonstration, and motor vehicle emissions budgets to reflect EMFAC2002. On February 21, 2003, CARB submitted the Final 2001 CAP, as amended by the SBCAPCD, with a request that we approve the plan as meeting the CAA maintenance plan provisions and redesignate Santa Barbara to attainment for the 1-hour ozone NAAQS (letter from Catherine Witherspoon, CARB Executive Officer, to Wayne Nastri, Regional Administrator, EPA Region 9).

*B. Clean Air Act Provisions for Maintenance Plans*

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must provide for continued maintenance of the applicable NAAQS for at least 10 years after the area is redesignated to attainment (CAA section 175A(a)). To address the possibility of future NAAQS violations, the maintenance plan must contain contingency provisions that are adequate to assure prompt correction of a violation, and must include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area (CAA section 175A(d)).

We have issued maintenance plan and redesignation guidance, primarily in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble,'' 57 FR 13498, April 16, 1992); a September 4, 1992 memo from John Calcagni titled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (''Calcagni memo''); a September 17, 1993 memo from Michael H. Shapiro titled ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992''; and a November 30, 1993 memo from D. Kent Berry titled ''Use of Actual Emissions in the Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas.''

The Calcagni memo provides that an ozone maintenance plan should address five elements: an attainment year emissions inventory (*i.e.*, an inventory reflecting actual emissions when the area recorded attainment, and thus a level of emissions sufficient to attain the 1-hour ozone NAAQS), a maintenance demonstration, provisions for continued operation of an appropriate air quality monitoring network, verification of continued maintenance, and contingency measures.

*C. Clean Air Act Provisions for Redesignation*

CAA section 107(d)(3)(E) allows for redesignation providing that: (1) We determine, at the time of redesignation, that the area has attained the NAAQS; (2) we have fully approved the applicable implementation plan for the area under section 110(k); (3) we determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal regulations, and other permanent and enforceable reductions; (4) we fully approve a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the State containing such area has met all nonattainment area requirements applicable to the area under section 110 and part D. We have provided guidance on redesignation in the General Preamble and in the guidance memos cited above.

## II. EPA Review of the Santa Barbara Maintenance Plan and Redesignation Request

*A. Maintenance Plan*

As discussed above in section I.A., the 2001 CAP was initially submitted on May 29, 2002. SBCAPCD amended the plan on December 19, 2002, by updating the motor vehicle emissions inventory portion, and CARB submitted the revised plan, known as the Final 2001 CAP, on February 21, 2003.[1] The plan consists of 4 volumes, the plan itself and the following 3 appendices: Appendix A—Emission Inventory and Forecasting Documentation; Appendix

[1] On February 25, 2003, we found that this submittal met the completeness criteria in 40 CFR part 51, appendix V, including the requirement for proper public notice and adoption.

B—Stationary Source Control Measure Documentation; Appendix C—Transportation Control Measures & On-Road Mobile Source Emissions Analysis.

On December 20, 2002, CARB also submitted the new CARB motor vehicle emissions factor model, EMFAC2002.[2] EMFAC2002 is used to prepare the on-road emission inventories in the plan. In early 2003, we expect to issue our conclusions regarding whether or not the EMFAC2002 emission factor element is acceptable and would thus be required to be used in the future for purposes of SIP development and transportation conformity. CARB has provided us with information about the EMFAC2002 revisions as they were being prepared and finalized, and we have preliminarily concluded for purposes of this proposed action that the emission factor element of EMFAC2002 is an improved and acceptable methodology for determining motor vehicle emissions. Assuming that we find that the updated emission factor model is acceptable, we propose to approve fully the emissions inventory, maintenance demonstration, motor vehicle emissions budgets in the Final 2002 CAP, and redesignation request, as discussed below. If we fail to find that the emission factor element is acceptable, we will not finalize these actions.

1. Attainment Emissions Inventory

The Final 2001 CAP includes 1999 attainment emissions inventories for Volatile Organic Compounds (VOC) and Nitrogen Oxides ($NO_X$), which are used to forecast emissions for 2005, 2010, and 2015, taking into account future growth and changes in control factors.[3] Four emissions inventories are presented for the attainment year and for the projected years: annual inventories for the onshore and for the Outer Continental Shelf (OCS), and planning (typical summer day) inventories for the onshore and for the OCS. The primary difference between the annual emissions inventories and the planning emissions inventories lies in the adjustment of annual emissions in the planning inventories to reflect summer seasonal variations, and the planning inventories' exclusion of natural sources (such as biogenics, oil and gas seeps, and wildfires), since those sources are not regulated.

The inventories use current and accurate methodologies, emissions factors, and survey information. The inventories represent actual emissions, with certain exceptions that are documented in the maintenance plan.[4] For example, the projected emissions inventories include emission reduction credits (ERCs) in the SBCAPCD's Source Register (2001 CAP, page 6–2) and a projected growth conformity allowance for the Vandenberg Air Force Base (2001 CAP, page 6–5).[5]

The 2001 Plan projects no growth in emissions from OCS oil and gas production activities, noting that any increased production would be permitted under the New Source Review (NSR) or Prevention of Significant Deterioration (PSD) regulations, and therefore any potential increase in emissions would need to be offset to provide a net emission benefit from the new OCS activity.

The onroad emissions inventories employ the new CARB motor vehicle emissions factor model, EMFAC2002. The motor vehicle inventories use the latest planning activity levels, including data generated by the Santa Barbara County Association of Government's Santa Barbara Travel Model, and updated county-specific vehicle data from the California Department of Motor Vehicles.

As discussed above, we expect to issue our conclusions regarding whether or not the emission factor element of EMFAC2002 is acceptable in the near future. Assuming that we find that the updated element is acceptable, we propose to approve fully the emissions inventories under CAA sections 172(c)(3) and 175A, since the inventories are complete, consistent with our most recent guidance, and reflect the latest information available at the time of plan preparation. However, if we fail to find that the emission factor element of the model is adequate, we will not finalize this proposed approval.

2. Maintenance Demonstration

Original maintenance plans must show how the NAAQS will be maintained for the next 10 years following redesignation to attainment. This is generally performed by assuming that the emissions levels at the time attainment is achieved constitute a limit on the emissions that can be accommodated without violating the NAAQS. In the case of this plan, projected VOC and $NO_X$ emissions for 2010 and 2015 show continued attainment, since emissions levels of both of the ozone precursors are below 1999 levels. Table 1 below shows baseline and projected summer day emissions levels from both onshore and OCS sources.

TABLE 1.—SANTA BARBARA COUNTY MAINTENANCE DEMONSTRATION SUMMER DAY EMISSIONS IN TONS PER DAY

[Source: Santa Barbara Final 2001 Clean Air Plan]

| Year | VOC | $NO_X$ |
|---|---|---|
| 1999 | 43.69 | 77.64 |
| 2005 | 35.52 | 75.23 |
| 2010 | 30.97 | 74.04 |
| 2015 | 29.54 | 77.55 |

Maintenance is demonstrated since emissions of both ozone precursors decline from the 1999 attainment year inventory: VOC emissions are reduced by 14 tpd (approximately 32 percent) from 1999 to 2015, and $NO_X$ emissions are reduced by 3.6 tpd by 2010 (approximately 5 percent), but are essentially unchanged (a decrease of 0.09 tpd or less than 1 percent) by 2015. Increasingly stringent California and Federal motor vehicle emissions standards and fleet turnover account for the bulk of the inventory reductions, and the remaining emissions reductions come from fully adopted, permanent, and enforceable State, local, and Federal regulations.

$NO_X$ emissions are predicted to decline only slightly (less than 1 percent) by 2015, since the onshore reductions are almost eliminated by the 68 percent increase in OCS emissions associated with growth in international marine vessel activities. The SBCAPCD notes that additional actions by the federal government and EPA will be required to reduce the marine vessel emission increases. Final 2001 CAP, pages 7–9 through 7–11. While the plan does demonstrate maintenance despite projected growth in ship emissions, we

[2] The EMFAC model is the California equivalent to EPA's national motor vehicle emissions model, the most recent version of which is MOBILE6. EMFAC2002 reflects new vehicle test data and quantification techniques to update and enhance the information in the most recent prior versions. For example, EMFAC2002 accounts for heavy-duty vehicle emissions during extended idling and during off-cycle operation.

[3] The Santa Barbara 2001 CAP uses the term Reactive Organic Compounds (ROC) in place of the Federal terminology, VOC. The terms are essentially synonymous. Because VOC is the more common term, we use it in this notice.

[4] Documentation on the emissions inventories appears in Appendix A of the Final 2001 CAP, which presents growth and control factors by source category and fuel type, and displays the impact of rules and control measures on each affected source category.

[5] Emissions added to the plan to accommodate the Airborne Laser (ABL) Mission are as follows: 2005–0.0552 tpd VOC, 0 tpd $NO_X$; 2010 and 2015–0.0656 tpd VOC, 0.3602 tpd $NO_X$. The 2001 CAP notes that the $NO_X$ growth allowance covers emissions increases from the ABL project that remain after application of 0.1265 emission reduction credits from the Source Register.

are working with SBCAPCD, CARB, and other stakeholders to identify and implement programs that can reduce emissions from marine vessels.

Assuming that we find that the emission factor element of EMFAC2002 is adequate, we propose to approve the maintenance demonstration under CAA section 175A(a), since the plan shows that emissions will remain below attainment levels due to the projected impact of fully adopted, permanent, and enforceable regulations. If we fail to find that the EMFAC2002 emission factor element is acceptable, we will not finalize this proposed action.

3. Continued Ambient Monitoring

The maintenance plan needs to contain provisions for continued operation of an air quality monitoring network that meets the provisions of 40 CFR part 58 and will verify continued attainment. The maintenance plan indicates that SBCAPCD will use air quality data from all monitoring stations in the County to track attainment status, and that the District will prepare annual design value summaries to verify maintenance of the NAAQS. Final 2001 CAP, page 7–11. This SBCAPCD commitment meets the continued monitoring provision.

4. Verification of Continued Attainment

The maintenance plan needs to show how the responsible agencies will track progress, and the plan should specifically provide for periodic inventory updates. The Santa Barbara maintenance plan indicates that SBCAPCD will meet this obligation through triennial updates to the area's attainment plan for the more protective State 1-hour ozone standard, which are mandated by the California Clean Air Act. These updates include assessments of the effectiveness of the control strategy, corrections for deficiencies in meeting progress requirements under State law, and new emissions inventory data or projections. We agree with the SBCAPCD that the triennial updates will meet our provisions for verification of continued attainment.

5. Contingency Provisions

CAA section 175A(d) provides that maintenance plans include contingency provisions ''necessary to assure that the State will promptly correct any violation of the standard * * *. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area.''

As noted above in Section I.A., we have already approved and made federally enforceable the contingency measures in Santa Barbara's 2001 CAP on August 27, 2002 (67 FR 54963). In that rulemaking, we approved 8 contingency measures under CAA section 110(k)(3) because these measures strengthened the existing SIP. These measures are listed below in Table 2, ''Contingency Measures.''

TABLE 2.—CONTINGENCY MEASURES

[Source: Final 2001 Clean Air Plan, Table 4–3]

| Rule | CAP control measure ID | Description | Adoption schedule | Emission reductions in tons per day (with full implementation) | |
|---|---|---|---|---|---|
| | | | | VOC | $NO_X$ |
| 323 | R–SC–1 | Architectural Coatings (Revision) | 2001–2003 | 0.0998 | 0 |
| 333 | N–IC–1<br>N–IC–3 | Stationary IC Engines | 2002–2003 | 0.0008 | 0.0128 |
| 360 | N–XC–2 | Large Water Heaters & Small Boilers, Steam Generators, Process Heaters (75,000 Btu/hr to <2 MMBtu/hr). | 2001–2003 | 0 | [1] 0.0133 |
| 321 | R–SL–1 | Solvent Degreasers (Revision) | 2004–2006 | 0.0562 | 0 |
| 362 | R–SL–2 | Solvent cleaning operations | 2004–2006 | 1.0103 | 0 |
| 363 | N–IC–2 | Gas Turbines | 2004–2006 | 0 | 0 |
| 358 | R–SL–4 | Electronic Industry—Semiconductor Manufacturing | 2007–2009 | [2] 0.0026 | 0 |
| 361 | N–XC–4 | Small Industrial and Commercial Boilers, Steam Generators, and Process Heaters (2 MMBtu/hr to <5 MMBtu/hr). | 2007–2009 | 0 | [3] 0.0028 |

[1] This is with 15% implementation, the highest implementation figure available from the District's analysis.
[2] The data shown are for source classification code (SCC) number 3–13–065–06 only. The emission data for the SCC numbers and the category of emission source (CES) numbers subject to Rule 358 are included in the Rule 321 or Rule 361 emission reduction summaries.
[3] The emission reductions shown are based on Rule 361 being a point-of-sale type rule.

When we approved these measures, the State had not yet submitted the Final 2001 CAP for approval under CAA section 175A, and so we did not rule on whether the contingency measures and other contingency provisions met the specific requirements of CAA section 175A(d).

The CAA and EPA's guidance on contingency provisions in maintenance plans do not require that the contingency measures be fully adopted (unlike the requirement for contingency measures in attainment plans), but that the maintenance plan should have a clear trigger and should provide for expedient adoption of measures sufficient to correct the violation promptly.

The Santa Barbara maintenance plan includes schedules for adopting the contingency measures as shown in Table 2, and the plan also includes a commitment by the SBCAPCD to evaluate and expedite rule adoption process in coordination with USEPA if the area experiences a violation of the Federal 1-hour ozone NAAQS prior to 2015 (Final 2001 CAP, page 7–12). Moreover, SBCAPCD has committed to take expeditious action following a violation to ensure that measures are implemented promptly to correct the violation (SBCAPCD Resolution No. 02–18, December 19, 2002).

6. Motor Vehicle Emissions Budgets

Maintenance plan submittals must specify the maximum emissions of transportation-related precursors of ozone allowed in the last year of the maintenance period. The submittals must also demonstrate that these emissions levels, when considered with emissions from all other sources, are

consistent with maintenance of the NAAQS. In order for us to find these emissions levels or ''budgets'' adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5), and be approvable under all pertinent SIP requirements.

The budgets defined by this and other plans when they are approved into the SIP or, in some cases, when the budgets are found to be adequate, are then used to determine the conformity of transportation plans, programs, and projects to the SIP, as described by CAA section 176(c)(3)(A). For more detail on this part of the conformity requirements, see 40 CFR 93.118. For transportation conformity purposes, the cap on emissions of transportation-related ozone precursors is known as the motor vehicle emissions budget. The budget must reflect all of the motor vehicle control measures contained in the maintenance demonstration (40 CFR 93.118(e)(4)(v)).

The motor vehicle emissions budgets are presented in Table 3 below, entitled ''Santa Barbara Revised 2001 Clean Air Plan Motor Vehicle Emissions Budgets,'' which is taken from section 5.4 of the Final 2001 CAP.

TABLE 3.—SANTA BARBARA FINAL 2001 CLEAN AIR PLAN MOTOR VEHICLE EMISSIONS BUDGETS

[Emissions are shown in tons per day]

| Year | $NO_X$ | VOC |
|---|---|---|
| 2005 Budget | 19.59 | 11.91 |
| 2015 Budget | 9.75 | 5.90 |

As discussed above, the motor vehicle emissions portion of these budgets (*i.e.,* the evaporative and tailpipe emissions) was developed using EMFAC2002 and updated county-specific vehicle data, including the latest Santa Barbara County planning assumptions on vehicle fleet and age distribution and activity levels. Assuming that we find the EMFAC2002 emission factor model is acceptable, we propose to approve the motor vehicle emission budgets as consistent with the criteria of 40 CFR 93.118(e)(4) and (5), including consistency with the baseline emissions inventories and the motor vehicle emissions used in the maintenance demonstration. If we do not find that the EMFAC2002 emission factor model is acceptable, we would not finalize the proposed approval of the budgets.

*B. Redesignation Provisions*

1. Attainment of the 1–Hour Ozone NAAQS

On August 27, 2002 (67 FR 54963), EPA issued a final determination that Santa Barbara County had attained the 1-hour ozone NAAQS by the CAA deadline of November 15, 1999. This finding was based on our conclusion that the design value for each monitor in the County for the period 1997–1999 was equal to or less than 0.12 ppm, and the average number of expected exceedance days per year was 1.0 or less for each monitor during that period. We also concluded that the ozone monitoring network for the area continued to meet or exceed applicable requirements. See the discussion in our proposed determination of attainment published on July 1, 2002 (67 FR 44128).

We have now looked at exceedance days and design values for each monitor for more recent 3-year periods, 1999–2001 and 2000–2002. These data are presented in Table 4, entitled Average Number of Ozone Exceedance Days per Year and Design Values by Monitor in Santa Barbara County, 1999–2001 and 2000–2002.'' As noted, not all data for the 4th quarter of 2002 have yet been quality assured and entered into EPA's Aerometric Information Retrieval System-Air Quality Subsystem (AIRS–AQS) database.

TABLE 4.—AVERAGE NUMBER OF OZONE EXCEEDANCE DAYS PER YEAR AND DESIGN VALUES BY MONITOR IN SANTA BARBARA COUNTY, 1999–2001 AND 2000–2002

| Site [1] | 1999–2001 | | 2000–2002 | |
|---|---|---|---|---|
| | Average number of exceedance days per year | Site design value (ppm) | Average number of exceedance days per year | Site design value (ppm) |
| El Capitan St (SLAMS) | 0 | 0.088 | 0 | 0.087 |
| Goleta (SLAMS) | 0 | 0.080 | 0 | 0.079 |
| Lompoc H Street (SLAMS) | 0 | 0.076 | 0 | 0.074 |
| Santa Barbara [2] (SLAMS) | 0 | 0.081 | 0 | 0.080 |
| Santa Maria (SLAMS) | 0 | 0.064 | 0 | 0.064 |
| Santa Ynez (SLAMS) | 0 | 0.079 | 0 | 0.082 |
| Santa Rosa Island (Nat. Park) | 0 | 0.086 | 0 | 0.079 |
| Carpinteria (SPM) | 0 | 0.094 | 0 | 0.088 |
| GTC B (SPM) | 0 | 0.085 | 0 | 0.085 |
| Lompoc HS&P (SPM) | 0 | 0.083 | 0 | 0.081 |
| Paradise Road (SPM) | 0 | 0.101 | 0 | 0.101 |
| Las Flores Canyon (Site 1) (SPM) | 0.7 | 0.098 | 0.3 | 0.097 |
| Vandenburg AFB STS (SPM) | 0 | 0.081 | 0 | 0.079 |

**Note 1:** State or Local Air Monitoring Stations (SLAMS) are operated by SBCAPCD or CARB, while special purpose monitors (SPMs) are operated independently by certain permitted stationary sources in the county under the oversight of the SBCAPCD. All data produced by these SPMs are submitted to EPA's Aerometric Information Retrieval System-Air Quality Subsystem (AIRS–AQS) database.

**Note 2:** The Santa Barbara monitor (at 3 W. Carrillo Street) was shut down from 11/1/00 through 5/23/01, and from 2/1/02 through 5/1/02. The monitor recorded essentially complete data for the period 1997–1999 and during this period the peak concentration was 0.098 ppm. No exceedances have been recorded at the monitor since 1992.

As shown in Table 4, the highest design value at any monitor for 1999–2001 and for 2000–2002, and thus the design value for the Santa Barbara area for those periods, is below 0.12 ppm. No monitor in the Santa Barbara area

recorded an average of more than 1 exceedance of the 1-hour ozone standard per year during the 1999–2001 and 2000–2002 periods.

Because the area's design value is below the 1-hour ozone standard of 0.12 ppm and the area has averaged less than 1 exceedance per year at each monitor for the 1999–2001 and 2001–2002 periods, we propose to conclude that the Santa Barbara area has met this prerequisite to redesignation because the area has attained and continues to attain the 1-hour ozone standard.

2. Fully Approved Implementation Plan Under CAA Section 110(k)

Following adoption of the CAA of 1970, California has adopted and submitted and we have fully approved at various times provisions addressing the various SIP elements applicable in Santa Barbara County. No Santa Barbara SIP provisions are currently disapproved, conditionally approved, or partially approved.

3. Improvement in Air Quality Due to Permanent and Enforceable Measures

Section 7.4 of the Final 2001 CAP includes analyses demonstrating that the reductions in ozone concentrations cannot be attributed to reduced activity levels or favorable meteorology, but are rather due to permanent and enforceable measures, such as those discussed in Chapters 4 and 5 of the Final 2001 CAP. The plan shows a steady increase in vehicle miles traveled from 1995 through 1999, reflective of continued activity growth in the area. The plan also lists mean temperature during April to October for each year from 1990 through 2000, and compares these values with the 74-year April to October average. There were a variety of weather conditions during the period when the County had attained the NAAQS, suggesting that anomalous weather does not account for attainment.

4. Fully Approved Maintenance Plan

In section II.A., above, we are proposing to approve fully the Final 2001 CAP as meeting the CAA section 175A provisions for maintenance plans, assuming that we find that the EMFAC2002 emission factor element is adequate.

5. CAA Section 110 and Part D Provisions Satisfied

We approved Santa Barbara's 1994 ozone SIP on January 8, 1997 (62 FR 1187) with respect to CAA section 110 and Part D provisions applicable to a moderate nonattainment area, with the exception of the attainment demonstration, which the State had withdrawn. Following our reclassification of Santa Barbara to serious, Santa Barbara adopted and the State submitted a plan addressing CAA section 110 and Part D provisions applicable to a serious nonattainment area, including the demonstration of attainment. We fully approved this plan on August 14, 2000 (65 FR 49499).

## III. EPA Action

We are proposing to approve the Santa Barbara Final 2001 CAP under CAA sections 175A and 110(k)(3). As discussed above in section I.A., we have previously approved the contingency measures under CAA section 110(k)(3); we are now proposing to approve them as meeting the requirements of CAA section 175A(d). We are proposing to approve the 2005 and 2015 VOC and $NO_X$ motor vehicle emissions budgets in Table 5–5 under CAA sections 176(c) as adequate for maintenance of the 1-hour ozone NAAQS and for transportation conformity purposes. Finally, we are proposing to redesignate Santa Barbara to attainment for the 1-hour ozone standard under CAA section 107(d)(3)(E). As we have discussed, however, we would not finalize these actions if we fail to conclude that the emission factor element of EMFAC2002 is acceptable.

## IV. Statutory and Executive Order Reviews

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

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

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

## List of Subjects

*40 CFR Part 52*

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

*40 CFR Part 81*

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

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

Dated: March 6, 2003.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 03–7058 Filed 3–24–03; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 83

**RIN 0920–ZA00**

### Procedure for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000

**AGENCY:** Department of Health and Human Services.

**ACTION:** Notice of proposed rulemaking; extension of comment period.

**SUMMARY:** The Department of Health and Human Services (HHS) is extending the comment period for the proposed rule on procedures for designating classes of employees as members of the Special Exposure Cohort under the Energy Employees Occupational Illness Program Act (EEOICPA) that was published in the **Federal Register** on Friday, March 7, 2003.

**DATES:** Any public written comments on the proposed rule must be received on or before May 6, 2003.

**ADDRESSES:** Address written on the notice of proposed rulemaking to the NIOSH Docket Officer. Electronically e-mail comments to: *NIOCINDOCKET@CDC.GOV.* Alternatively, submit printed comments to NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

**FOR FURTHER INFORMATION CONTACT:** Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–841–4498 (this is not a toll free number). Information requests may also be submitted by e-mail to *OCAS@CDC.GOV.*

**SUPPLEMENTARY INFORMATION:** On March 7, 2003, HHS published a notice of proposed rulemaking proposing a procedure for designating classes of employees as members of the Special Exposure Cohort under EEOICPA, (*See* FR Vol. 68, No. 45, 11294). The notice included a public comment period that was to end on April 7, 2003. On March 7, 2003, NIOSH convened the Advisory Board on Radiation and Worker Health to review the proposed rule. The Board recommended that the comment period be extended by 15 days, for a total of 45 days, to ensure the public has adequate time to review and comment on the proposal. HHS agrees with the Board that a longer comment period is desirable, and is now providing for a 60-day comment period.

To provide the public with additional time to review and comment on the proposed rule, HHS is extending the public comment period to May 6, 2003.

Dated: March 21, 2003.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 03–7243 Filed 3–21–03; 2:52 pm]

BILLING CODE 4160–17–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 030314059–3059–01; I.D. 030603B]**

**RIN: 0648–AQ48**

### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Small Mesh Multispecies Fishery; Northeast Multispecies Fishery Management Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Advance notice of proposed rulemaking; notice of a new control date for the purpose of controlling entry in the small-mesh multispecies fishery.

**SUMMARY:** NMFS announces that it is considering, and is seeking public comment on, proposed rulemaking to control future access to the small mesh multispecies (silver hake, *Merluccius bilinearis*; red hake, *Urophycis chuss*; offshore hake, *Merluccius albidus*) resources if a management regime is developed and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that limits the number of participants in the fishery. This announcement is intended, in part, to promote awareness of potential eligibility criteria for future access to the small mesh multispecies fishery and to discourage speculative entry into the fishery while the New England Fishery Management Council (Council) and NMFS consider whether and how access to the small-mesh multispecies fishery should be controlled. The date of publication of this document, March 25, 2003, shall be known as the ''control date'' and may be used for establishing eligibility criteria for determining levels of future access to the small mesh multispecies fishery subject to Federal authority. Participants who enter the small mesh multispecies fishery on or after March 25, 2003 may be treated differently than those with a history in the fishery before this date. The establishment of this control date does not prevent any other control date for eligibility in the fishery or another method of controlling access and/or fishing effort on small mesh multispecies from being proposed and implemented by the Council and NMFS.

**DATES:** Written comments must be received on or before 5:00 p.m., local time, April 24, 2003.

**ADDRESSES:** Written comments should be sent to Paul Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Mark the outside of the envelope, ''Comments on Small Mesh Multispecies Control Date.'' Comments also may be sent via facsimile (fax) to (978) 465–3116. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272.

**SUPPLEMENTARY INFORMATION:** A control date for the silver hake, offshore hake, and red hake fisheries was established on September 9, 1996 (61 FR 47473), to promote awareness of potential eligibility criteria for future access to the small mesh fishery and to discourage new entry into the fishery. The Council used this control date to develop a proposed limited access program for this fishery included in Amendment 12 to the Northeast Multispecies Fishery Management Plan (FMP), a management program for small mesh multispecies that was implemented on April 28, 2000. The Amendment 12 limited access program for small mesh multispecies was later disapproved by NMFS because it was found to be inconsistent with some of the requirements of the Magnuson-Stevens Act. As a result, the small mesh multispecies fishery remains an open-access fishery.

The Council intends to develop a new amendment to address limited access in the small- mesh multispecies fishery. The Council is concerned that conditions have changed sufficiently in this fishery to make the September 1996 control date an unreliable indicator of current participation. A new control date would reflect current participation

levels, should the Council require such a benchmark when developing a new limited access program.

The Whiting Monitoring Committee (WMC) recommended that the Council consider establishing a new control date for small mesh multispecies because circumstances in Northeast fisheries have changed since the establishment of the September 1996 control date. Amendment 5 to the FMP prevented fishing with small mesh in the northern stock area until exempted fisheries could be established that reduce the bycatch of regulated multispecies to less than 5 percent. Since implementation of Amendment 5 in 1994, experimental and exempted fisheries for small mesh multispecies in the northern stock area have evolved through cooperative experimentation, gear research, and gear technologies that significantly reduce bycatch of non-target species, especially regulated multispecies. Many of these technologies took years to develop and, as a result, the 1996 control date does not capture current levels of participation or fishing practices in the small mesh multispecies fishery, especially in the northern stock area. Therefore, it is unlikely that the Council would utilize a dated control date in the development of a new limited access program for small mesh multispecies. A new control date is more likely to be utilized in a limited access program because it would capture current participation in the small mesh multispecies fishery and provide a more suitable benchmark.

This notice establishes March 25, 2003 as the new control date for potential use in determining historical or traditional participation in the small mesh multispecies fishery. Consideration of a control date does not commit the Council or NMFS to develop any particular management regime or criteria for participation in this fishery. The Council or NMFS may choose a different control date, or may choose a management program that does not make use of such a date.

Fishermen who have not participated in the small mesh multispecies fishery or change their level of participation in this fishery are notified that entering this fishery or changing their level of participation after this control date may not qualify them as previous participants, should such a criterion be the basis for future access to the small mesh multispecies resources. Fishermen are not guaranteed future participation in the fishery, regardless of their entry dates or intensity of participation in this fishery before or after the control date. The Council and NMFS may choose to give variably weighted consideration to fishermen active in the fishery before and after the control date. The Council and NMFS may also choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded. Any action by the Council or NMFS will be taken pursuant to the requirements for FMP development established under the Magnuson-Stevens Act.

Establishing a new control date for the small mesh multispecies fishery may help to discourage an influx of new participants as a short-term response to the restrictions expected to be implemented under Amendment 13 to the FMP. This could aid in preventing rapid stock declines and help keep the fishery viable for current and historical participants. The 2002 Stock Assessment and Fishery Evaluation Report, prepared by the WMC, expressed concern that effort may increase in the small mesh multispecies fishery as a result of increasing restrictions in other fisheries, such as the large mesh multispecies (groundfish) fishery, which are currently under development by the Council.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the small mesh multispecies fishery in Federal waters.

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

Dated: March 19, 2003.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 03–7068 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 68, No. 57

Tuesday, March 25, 2003

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

### Submission for OMB Review; Comment Request

March 19, 2003.

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 Offier 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.

**Foreign Agricultural Service**

*Title:* Export Assistance and Services.

*OMB Control Number:* 0551–0031.

*Summary of Collection:* The Ag Export Services Division of the Foreign Agricultural Service (FAS) facilities trade contacts between U.S. exporters and foreign buyers seeking U.S. food and agricultural products. Authority for this program falls under 7 U.S.C. part 1761, 7 U.S.C. part 5693 and 7 U.S.C. part 1765B. All of the assistance and services offered by the Division are designed to promote U.S. agricultural exports; help U.S. firms make contact with export agents, trading companies, importers and foreign buyers and create an opportunity to sell their products in overseas markets. This service provides the U.S. firm an opportunity to have a data record providing basic information about the company and the products its exports put into a USDA maintained database. FAS will collect information using a combination of forms and telephone interviews.

*Need and Use of the Information:* FAS will collect information on contact names, mailing addresses, telephones, fax, e-mail, and websites. The main purpose for collecting the information is to foster trade contacts in an effort to facilitate greater export of U.S. agriculture food, forestry, and fishery products. The databases are used to recruit U.S. exporters, importers, and buyers to participate in market development activities sponsored by USDA. These databases must be updated periodically to maintain the integrity and usefulness to the trade community.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 57,110.

*Frequency of Responses:* Reporting: annually; on occasion; quarterly.

*Total Burden Hours:* 10,476.

**Farm Service Agency**

*Title:* Report of Acreage.

*OMB Control Number:* 0560–0004.

*Summary of Collection:* Land and crop information is the basic foundation upon which many of Farm Service Agency (FSA) programs operate. The report of acreage is conducted on an annual basis and is used by FSA's county offices to determine eligibility for benefits that are available to producers on the farm. The actual number of producers who must supply information varies depending on: (1) The type of farming operation, and (2) the mix of crops planted (which has a direct relationship to the type of program the producer is eligible to participate in). In order to establish eligibility annually for these programs, a minimal amount of land and crop data about a producer's farming operation is required. The information is subsequently used to ensure compliance with program provisions, to determine actual production histories, and when disaster occurs, to verify crop loss. Producers must provide the information each year because variables such as previous year experience, weather projections, market demand, new farming techniques and personal preferences affect the amount of land being farmed, the mix of crops planted, and the projected harvest.

*Need and Use of the Information:* FSA will collect information verbally from the producers during visits to the county offices. FSA will collect one or more of the following data elements, as required: crop planted, planting date, crop's intended use, type or variety, practice (irrigated or non-irrigated), acres, location of the crop (tract and field), and the producer's percent share in the crop along with the names of other producers having an interest in the crop. Once the information is collected and eligibility established, the information is used throughout the crop year to ensure the producer remains complaint with program provisions. Without a certain level of information provided each crop year by the producer, a significant misuse of public funds could occur.

*Description of Respondents:* Farms; individuals or households; State, local, or tribal government.

*Number of Respondents:* 514,800.

*Frequency of Responses:* Reporting; annually.

*Total Burden Hours:* 755,325.

**Farm Service Agency**

*Title:* Farm Reconstitutions (7 CFR part 718).

*OMB Control Number:* 0560–0025.

*Summary of Collection:* The Agricultural Act of 1938, as amended, provides for the reconstitution of farms. A reconstitution is a change in the land constituting a farm as a result of combining or dividing tracts of land or

farms. The reconstitution process ensures that the farm and tract records in the County FSA Office are correct and up to date. A reconstitution is a required procedure when a producer wishes to increase or decrease acreage attributed to the farm from leases, sale of land, or purchase of land. Form FSA–155, Request for Reconstitution, is used as the request for a farm reconstitution initiated by the producer.

*Need and Use of the Information:* FSA will collect information to determine farm and tract numbers, farmland, cropland, agricultural use land, distribution of tobacco quota and allotments, peanut quota, and production flexibility contract acres resulting from combination or division of the farming operation. The information is used by the County Office employees to document farm owners and operators, farmland, cropland, crop acreages, and whether land is being purchased or sold. Failure to collect the information required by FSA–155 would result in inaccurate farm records.

*Description of Respondents:* Farms.

*Number of Respondents:* 7,154.

*Frequency of Responses:* Reporting: on occasion.

*Total Burden Hours:* 12,519.

**Farm Service Agency**

*Title:* Payer's Request for Identifying Number.

*OMB Control Number:* 0560–0121.

*Summary of Collection:* Under section 6109 of the Internal Revenue Code, recipients of dividends, interest, or other payments are required to furnish identifying numbers to payers who must report such payments to the Internal Revenue Service. producers who receive Farm Service Agency (FSA) payments must provide a social security, employer, or IRS identifying number before any payment is made. FSA will collect information using form CCC–343, payer's Request for Identifying Number.

*Need and Use of the Information:* FSA will prepare a CCC–343 for each producer who cannot furnish a producer ID number. The information on the form is used to obtain a producer identifying number so program payments can be made. If the information is not collected a penalty can be imposed and FSA will not make program payments to producers without an identifying number.

*Description of Respondent:* Individuals or households; business or other for-profit; not-for-profit institutions; state, local or tribal government.

*Number of Respondents:* 1000.

*Frequency of Responses:* Reporting; other (when necessary).

*Total Burden Hours:* 83.

**Farm Service Agency**

*Title:* Importer Assessments (7 CFR part 1464, subpart B).

*OMB Control Number:* 0560–0148.

*Summary of Collection:* The Omnibus Budget Reconciliation Act of 1993 (the 1993 Act) imposes assessments on importers of unmanufactured tobacco, which enters into the commerce of the United States. The 1993 Act amended sections 106, 106A, and 106B of the Agricultural Act of 1949 (the 1994 Act) to require that each importer of such tobacco shall remit to Commodity Credit corporation (CCC) a no-net cost assessment fee on every pound of un-manufactured flue-cured or burley tobacco imported. The Farm Service Agency (FSA) will collect information using form CCC–100, Importer Entry and Assessment Worksheet.

*Need and Use of the Information:* FSA will collect information on the importers' name, import date, port of entry, and quantity imported to calculate the marketing assessment amount and the import assessment fee. The information collected is used by FSA to ensure that the marketing assessment fees and the importers no-net cost assessment fees are timely and accurately remitted by importers of unmanufactured tobacco that enters into the commerce of the United States.

*Description of Respondent:* Business or other for-profits; Federal government.

*Number of Respondents:* 19.

*Frequency of Responses:* Recordkeeping; reporting; other (import date).

*Total Burden Hours:* 257.

**Farm Service Agency**

*Title:* Tobacco Marketing Quota: Referenda Ballot, Receiving Station and Other Purchases.

*OMB Control Number:* 0560–0182.

*Summary of Collection:* The Agricultural Adjustment Act of 1938, as amended, (1938 Act) requires the proclamation of national marketing quotas for tobacco and requires the Secretary of Agriculture to conduct referenda to determine whether producers favor or oppose marketing quotas. Section 312 of the 1938 Act requires the Secretary of Agriculture to proclaim national marketing quotas for tobacco and to conduct a referendum of the farmers who are engaged in the production of the crop of tobacco harvested immediately prior to the referendum to determine whether such farmers are in favor of, or opposed to, national marketing quotas for the next succeeding marketing years. The Farm Service Agency (FSA) will collect information using several FSA forms.

*Need and Use of the Information:* FSA will collect information to determine whether marketing quotas will be in effect for certain kinds of tobacco and voters eligibility. Without conducting a referendum, the Secretary would be unable to administer statutory requirements regarding tobacco-marketing quotas. If no referendum were held and approved by eligible voters, tobacco producers would not have the benefits of a marketing quota and thereby a price support program.

*Description of Respondents:* Business or other for-profit; individuals or households; Federal government.

*Number of Respondents:* 327,537.

*Frequency of Responses:* Reporting: weekly; other (daily/every 3 yr.).

*Total Burden Hours:* 29,556.

**Farm Service Agency**

*Title:* Assignments of Payments and Joint Payment Authorization.

*OMB Control Number:* 0560–0183.

*Summary of Collection:* When the recipient of a Commodity Credit Corporation (CCC) or a Farm Service Agency (FSA) payment chooses to assign a payment to another party or have the payment made jointly with another party, the other party must be identified. This is a free service that is available upon request by the program payee. The regulations for assignment of payments are at 7 CFR part 1404. FSA will collect information using various forms.

*Need and Use of the Information:* FSA employee to record payment or contract being assigned, the amount of the assignment, the date, and the name and address of the assignee and the assignor will use the information collected on the forms. This is to enable FSA employee to pay the proper party when payments become due. FSA will also use the information to terminate joint payments at the request of both the producer and joint payee. If the information is not collected, there would be no payment to third party at the request of the respondents.

*Description of Respondent:* Farms; individuals or households.

*Number of Respondents:* 69,325.

*Frequency of Responses:* Reporting; on occasion.

*Total Burden Hours:* 11,778.

**Farm Service Agency**

*Title:* Lamb Meat Adjustment Assistance Program (LMAAP).

*OMB Control Number:* 0560–0205.

*Summary of Collection:* The Lamb Meat Adjustment Assistance Program

(LMAAP) is administered and implemented under the general direction and supervision of the Farm Service Agency (FSA) through its State and County Committees. Authorizing legislation for LMAAP provides for the re-establishment of farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption. The objective of the LMAAP program is to make direct payments to producers of sheep and lamb operations to help them weather the current economic crisis, as well as, help improve their production efficiencies and the marketability of lamb meat during the period from July 21, 1999, through July 31, 2003.

*Need and Use of the Information:* FSA will collect information using form FSA 383 for program years 2–4 for the sheep and lamb operations. The information obtained from the form is needed to verify commodity and producer eligibility and calculate payment amounts. Without the information from the producers, FSA would be unable to administer the program to provide direct payments to the sheep and lamb operations.

*Description of Respondents:* Farm; individuals or households; business or other-for-profit.

*Number of Respondents:* 63,100.

*Frequency of Responses:* Reporting: annually.

*Total Burden Hours:* 351,257.

**Farm Service Agency**

*Title:* Bioenergy Program.

*OMB Control Number:* 0560–0207.

*Summary of Collection:* To encourage bioenergy producers to expand agricultural markets by promoting increased bioenergy production, the Commodity Credit Corporation (CCC), in accordance with the 2002 Act, will make incentive cash payments for FY 2003 through FY 2006 to bioenergy producers who increase their production of bioenergy (fuel grade ethanol and biodiesel) from eligible commodities over previous fiscal year bioenergy production. CCC will use its authority under section 5 of the CCC Charter Act, 15 U.S.C. 714c, to make biodiesel production eligible for the Program that would not be eligible solely under the bioenergy provisions of the 2002 Act to support the biodiesel industry. Bioenergy producers will enter into an agreement with CCC establishing their eligibility to receive program payments. The information will be collected by either mail or fax.

*Need and Use of the Information:* CCC will collect information from bioenergy producers that request payments under the Bioenergy Program to ensure the benefits are paid only to eligible bioenergy producers for eligible commodities. Failure to collect this information as outlined would make it difficult to ensure that payments to producers are made in accordance with the provisions of the regulations.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 100.

*Frequency of Responses:* Recordkeeping; reporting: annually; quarterly; other (850 multi-year).

*Total Burden Hours:* 1,100.

**Farm Service Agency**

*Title:* Designation of Burley Tobacco Sales & Annual Waiver To Release Information Restricted by the Privacy Act.

*OMB Control Number:* 0560–0217.

*Summary of Collection:* The Agricultural Adjustment Act of 1938, as amended (1938 Act) states a primary purpose of the Federal tobacco program will be ''* * *. to control effectively the orderly marketing * * *'' of tobacco and ''* * *. to promote, foster, and maintain an orderly flow of such supply * * *.'' Historically, 99 percent of all burley tobacco was marketed at auction warehouses. The large majority of burley tobacco is now being sold non-auction directly to manufacturers. Without the collection of designation information for burley tobacco, the Farm Service Agency (FSA) would not know where the tobacco would be sold or how many pounds would be sold outside the traditional auction market system. FSA will collect information using FSA–808, Designation of Burley Tobacco Sales and Request for Marketing Cards and MQ–60, Annual Waiver to Release Information Restricted by the Privacy Act.

*Need and Use of the Information:* FSA will collect the pounds, locations, and marketing cards information from the forms. FSA will also collect information to assign tobacco graders as needed to auction warehouses in order to grade tobacco that is delivered for sale.

*Description of Respondent:* Individuals or households; Federal Government.

*Number of Respondents:* 150,000.

*Frequency of Responses:* Reporting; annually.

*Total Burden Hours:* 187,504.

**Rural Utilities Service**

*Title:* Telecommunications System Construction Polices and Procedures.

*OMB Control Number:* 0572–0059.

*Summary of Collection:* The Rural Electrification Act of 1936 (RE Act), 7 U.S.C. 901 *et seq.,* was amended in 2002 by title IV, Rural Broadband Access, by Farm Security and Rural Investment Act, which authorizes Rural Utilities Service (RUS) to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition for facilities and equipment for the provision of broadband service in eligible rural communities in the States and territories of the United States. Title VI of the RE Act requires that loans are granted only to borrowers who demonstrated that they will be able to repay in full within the time agreed. RUS has established certain standards and specification for materials, equipment and construction to assure that standards are maintained; loans are not adversely affected, and loans are used for intended purposes.

*Need and Use of the Information:* RUS has developed specific forms for borrowers to use when entering into contracts for goods of services. The information collected is use to implement certain provisions of loan documents about the borrower's purchase of materials and equipment and the construction of its broadband system and is provided on and as needed basis or when the individual borrower undertakes certain projects. The standardization of the forms has resulted in substantial savings to borrowers by reducing preparation of the documentation and the costly review by the government.

*Description of Respondents:* Business or other for-profit; not-for-profit.

*Number of Respondents:* 238.

*Frequency of Responses:* Reporting: quarterly.

*Total Burden Hours:* 3,123.

**Rural Utilities Service**

*Title:* 7 CFR 1728, Electric Standards and Specifications for Materials and Construction.

*OMB Control Number:* 0572–New.

*Summary of Collection:* The Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* as amended, (RE Act) in sec. 4 (7 U.S.C. 904) authorizes and empowers the Administrator of the Rural Utilities Service (RUS) to make loans in several States and Territories of the United States for rural electrification and the furnishing and improving of electric energy to persons in rural areas. RUS' Administrator is authorized to provide financial assistance to borrowers for purposes provided in the RE Act by guaranteeing loans made by the National Rural Utilities Cooperative Finance Corporation, the Federal Financing Bank, and other lending agencies. These loans are for a term of up to 35 years and are secured by a first mortgage on the borrower's electric

system. Manufacturers wishing to sell their products to RUS electric borrowers request RUS consideration for acceptance of their products and submit letters of request with certifications as to the origin of manufacture of the products and include certified data demonstrating their products' compliance with RUS specifications.

*Need and Use of the Information:* RUS will collect information to evaluate the data to determine that the quality of the products is acceptable and that their use will not jeopardize loan security. The information is closely reviewed to be certain that test data; product dimensions and product material compositions fully comply with RUS technical standards and specifications that have been established for the particular product. Without this information, RUS has no means of determining the acceptability of products for use in the rural environment.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 38.

*Frequency of Responses:* Reporting: on occasion.

*Total Burden Hours:* 1,760.

**Rural Housing Service**

*Title:* 7 CFR 1944–B, Housing Applications Packaging Grants.

*OMB Control Number:* 0575–0157.

*Summary of Collection:* Section 509 of the Housing Act of 1949, as amended, authorizes the Rural Housing Service (RHS) to make grants to private and public nonprofit organizations and State and local governments to package housing applications for Section 502, 504, 514/515 and 533 to colonias and designated counties. Eligible organizations aid very low and low-income individuals and families in obtaining benefits from RHS housing programs. Various forms are used to confirm income verification for loan applicants, as a checklist to obtain a loan, and to check credit information about the applicants.

*Need and Use of the Information:* RHS field personnel will use this information to verify program eligibility requirements, to secure grant assistance, and for approval of housing application-packaging grants. The information will ensure that the program is administered in a manner consistent with legislative and administrative requirements. Without this information, RHS would be unable to determine if a grantee qualifies for grant assistance.

*Description of Respondents:* Not-for-profit institutions.

*Number of respondents:* 300.

*Frequency of responses:* Recordkeeping; reporting: on occasion.

*Total Burden Hours:* 1,350.

**Animal Plant and Health Inspection Service**

*Title:* Recognizing the Animal Disease Status of Regions in the European Union.

*OMB Control Number:* 0579-New.

*Summary of Collection:* title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as brucellosis, as well as to take actions to prevent and to manage exotic diseases such as hog cholera and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal Plant and health Inspection service (APHIS) ability to compete in exporting animal and animal products. APHIS published a rule that would recognize Greece as a region free of foot-and-mouth disease; recognize Greece and nine regions in northern Italy as free of swine vesicular disease; and recognize Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, and Spain as a region free of hog cholera. Recognizing the new animal health status of these regions will allow them to import swine, pork and pork products, and swine semen into the United States under less stringent conditions, and will be regarded by the international community as a lowering of trade barriers. APHIS will collect information using certificates.

*Need and use of the Information:* APHIS will collect information concerning the origin and history of the items destined for importation into the United States. APHIS will also collect information to ensure that swine, pork and pork products, and swine semen pose a negligible risk of introducing exotic swine diseases into the United States. if the information is not collected it would cripple APHIS' ability to ensure that swine, pork and pork products, and swine semen pose a minimal risk of introducing hog cholera and other exotic animal disease into the United States.

*Description of Respondents:* Business or other for profit; State, local and tribal government.

*Number of Respondents:* 30.

*Frequency of Responses:* Reporting: on occasion.

*Total Burden Hours:* 300.

**Agricultural Marketing Service**

*Title:* Specified Commodities Imported into the United States Exempt from Import Requirements, 7 CFR Part 944, 980, and 999.

*OMB Control Number:* 0581–0167.

*Summary of Collection:* Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674) provides that when certain domestically produced commodities are regulated under a Federal marketing order; imports of the commodity must meet the same or comparable requirements. Import regulations apply only during those periods when domestic marketing order regulations are in effect. No person may import products for processing or other exempt purposes unless an executed Importers Exempt Commodity Form (FV–6) accompanies the shipment. The Civil Penalty Stipulation Agreement (FV–7) is a ''volunteer'' form that provides the Agricultural Marketing Service (AMS) with an additional tool to obtain resolution of certain cases without the cost of going to a hearing.

*Need and Use of the Information:* AMS utilizes the information to ensure that imported goods destined for exempt outlets are given no less favorable treatment than that afforded to domestic goods destined for such exempt outlets. The importers wishing to import commodities will use form FV–6, ''Importer's Exempt Commodity'', which requires a minimum amount of information.

*Description of Respondents:* Business or other for-profit; not-for-profit institutions.

*Number of Respondents:* 324.

*Frequency of Responses:* Reporting: on occasion.

*Total Burden Hours:* 2550.

**Sondra A. Blakey,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 03–6974 Filed 3–24–03; 8:45 am]

BILLING CODE 3410–01–M

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## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

**[02–b–s]**

### Designation for the Oregon Area

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice.

**SUMMARY:** Grain Inspection, Packers and Stockyards Administration (GIPSA) announces the designation of Lewiston

Grain Inspection Service, Inc. (Lewiston) to provide official services under the United States Grain Standards Act, as amended (Act).

**EFFECTIVE DATE:** May 1, 2003.

**ADDRESSES:** USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the November 22, 2002, **Federal Register** (67 FR 70397), GIPSA announced that the Oregon Department of Agriculture was ceasing official inspection services, effective November 27, 2002, and asked persons interested in providing official services in the Oregon geographic area to submit an application for designation. Applications were due by December 23, 2002.

Lewiston was the sole applicant for designation to provide official services in the area specified in the November 22, 2002 **Federal Register**. GIPSA asked for comments on Lewiston in the January 29, 2003, **Federal Register** (68 FR 4445). No comments were received by the closing date, February 28, 2003.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Lewiston, main office in Lewiston, Idaho, is able to provide official services in the geographic area specified in the November 22, 2002, **Federal Register**, for which they applied, in addition to their currently assigned area. Interested persons may obtain official services by calling Lewiston at 208–746–0451.

**Authority:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: March 20, 2003.

**Donna Reifschneider,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 03–7021 Filed 3–24–03; 8:45 am]

BILLING CODE 3410–EN–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Vermont Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 11:15 a.m. on March 31, 2003. The purpose of the conference call is to discuss the Completion of planning for the upcoming April 9, 2003, town hall meeting in Montpelier. The conference call is available to the public through the following call-in number: 1–800–659–8304, access code 15920877. Any interested member of the public may call this number and listen to the meeting.

To ensure that the Commission secures an appropriate number of lines, persons are asked to register with USCCR by calling Marc Pentino of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on March 28, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC., March 17, 2003.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 03–7032 Filed 3–24–03; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

**AGENCY:** National Institute of Standards and Technology (NIST).

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

*Title:* Summer Undergraduate Research Fellowship (SURF) Program Student Applicant Information.

*Form Number(s):* None.

*OMB Approval Number:* None.

*Type of Review:* Regular submission.

*Burden Hours:* 400.

*Number of Respondents:* 200.

*Average Hours Per Response:* 2 hours.

*Needs and Uses:* The purpose of this collection is to gather information needed for the SURF (Summer Undergraduate Research Fellowship) Program. The information will be provided by student applicants and was described in the Proposal Review Process and Evaluation Criteria sections of the **Federal Register** Notice for the SURF Program published in the **Federal Register** on February 20, 2003. The information will be used by the Program Directors and technical evaluators and is needed to determine eligible students, select students for the program using the Evaluation Criteria, and place selected students in appropriate research projects that match their needs, interests, and academic preparation. The information includes: student name, host institution, e-mail address, home address, class standing, first- and second-choice NIST laboratories they wish to apply to, academic major and minor, current overall GPA, gender (for housing purposes only), availability dates, resume, personal statement of commitment and research interests, two letters of recommendation, academic transcripts, verification of U.S. citizenship or permanent legal residency, and verification of health coverage.

*Affected Public:* Individuals or households.

*Frequency:* Annually.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Jacqueline Zeiher, (202) 395–4638.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

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

Dated: March 19, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 03–7000 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–13–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

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

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

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

**EFFECTIVE DATE:** March 25, 2003.

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

**SUPPLEMENTARY INFORMATION:**

## Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on Stainless Steel Bar from India, Stainless Steel Flanges from India, Mechanical Transfer Presses from Japan and Heavy Forged Hand Tools (bars/wedges, and hammers/sledges) from the People's Republic of China.

## Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than February 28, 2004.

| | Period to be reviewed |
|---|---|
| **Antidumping Duty Proceedings** | |
| *France:* Low Enriched Uranium—A–427–818 | 7/13/01–1/31/03 |
| Eurodif S.A. | |
| *India:* Certain Preserved Mushrooms—A–533–813 | 2/1/02–1/31/03 |
| Agro Dutch Foods, Ltd. | |
| Alpine Biotech, Ltd. | |
| Dinesh Argo Products Ltd. | |
| Flex Foods, Ltd. | |
| Himalaya International, Ltd. | |
| Mandeep Mushrooms, Ltd. | |
| Premier Mushroom Farms | |
| Saptarishi Agro Industries, Ltd. | |
| Weikfield Agro Products, Ltd. | |
| *India:* Forged Stainless Steel Flanges—A–533–809 | 2/1/02–1/31/03 |
| Chandan Steel Ltd. | |
| Isibars, Ltd. | |
| Shree Ganesh Forging | |
| Viraj Group | |
| *India:* Stainless Steel Bar—A–533–810 | 2/1/02–1/31/03 |
| Chandan Steel Ltd. | |
| FACOR | |
| Isibars Limited | |
| Jyoti Steel Industries | |
| Mukand | |
| Venus Wire Industries Limited | |
| Viraj Group | |
| *Japan:* Mechanical Transfer Presses—A–588–810 | 2/1/02–1/31/03 |
| Hitachi Zosen Corporation and Hitachi Zosen Fukui Corporation d/b/a/ H&F Corporation | |
| *Malaysia:* Stainless Steel Butt-Weld Pipe Fittings—A–557–809 | 2/1/02–1/31/03 |
| Schulz (Mfg.) Sdn. Bhd. | |
| *Republic of Korea:* Certain Cut-to-Length Carbon-Quality Steel Plate—A–580–836 | 2/1/02–1/31/03 |
| Dongkuk Steel Mill Co., Ltd. | |
| KISCO—Korea Iron & Steel Co., Ltd. | |
| Union Steel Manufacturing Co. | |
| *Republic of Korea:* Stainless Steel Butt-Weld Pipe Fittings—A–580–813 | 2/1/02–1/31/03 |
| TK Corporation | |
| SungKwang Bend Co., Ltd. | |
| Sam Sung Stainless Commerce & Ind. Co., Ltd. | |
| *The People's Republic of China:* Axes/adzes*—A–570–803 | 2/1/02–1/31/03 |
| Adamant | |
| Baogui South/North Tools Shop | |
| BND Co., Ltd. | |
| Changlu Hardware Goods Factory | |
| Changzhou Light Industrial Tools Works | |
| Changzhou Satellite Metal Products Co., Ltd. | |
| Changzhou Xinhua Metal Factory | |
| China Hunan Jiahe General Forging Factory | |
| China National Import and Export Corp. (CMC) | |
| Dawn International Trade Co., ltd. | |
| Easyuse Tools Industrial Co., Ltd. | |
| Feixian Harewaretool Factory | |
| Ferly Pacific Trading (Ningbo) Co., Ltd. | |
| Fujian Machinery and Equipment Import and Export Corp. (FMEC) | |

| | Period to be reviewed |
|---|---|
| G & M Hardware Tools Co., Ltd. | |
| Handysmart Enterprises | |
| Hangzhou Donghua Power Transmission Import & Export Co., Ltd. | |
| Huanyu Hardware Tools Factory | |
| Hebei Huatai Import & Export Corp. | |
| Hebei Machinery Import & Export Corp. | |
| Henan Jiaozuo Foreign Trade Corp. | |
| Henan Jinan Agriculture Production Corp. | |
| Hua Guang Hoe Factory of Jiahe Hunan Province | |
| Huadu Light Industry Co., Ltd. | |
| Huanyu Hardware Tools Factory | |
| Hubei Province Manufactory of Export Agricultural Tools | |
| Hunan Xinyu Native Produce and Animal By-Products Import & Export Ltd. | |
| JY International Corp. | |
| JB International Trading Co., Ltd. | |
| Jiangsu Guotai International Group HUATAI Imp. & Exp. Co., Ltd. | |
| Jiangsu Hongbao Group Co., Ltd. | |
| Jiangsu Jurong Tools Factory | |
| Jiangsu Tongrun M & E Group Import & Export Co., Ltd. | |
| Jinhua Runua Foreign Trade Co., Ltd. | |
| Jinhua Twin Star Tools Corporation Limited | |
| Liawu | |
| Laoling Pangu Tools | |
| Laoling Zhengtai | |
| Liaoning Machinery Import and Export Corp. (LMC) | |
| LIMAC | |
| Linshu Goldstar Group Co., Ltd. | |
| Linshu Jinrun Ironware & Tools Co., Ltd. | |
| Linyi Guoxin Tools Co., Ltd. | |
| Longcheng Tools Group | |
| Longway Tools Company, Ltd. | |
| Maofa | |
| Ningbo Feiyuan International Trade Co., Ltd. | |
| Ningbo Tiangong Tools Company, Ltd. | |
| Ningbo Tiger Handware Manufacture Co. | |
| Pangu Tools Co., Ltd. | |
| Remein | |
| Saintly International Group Jiangsu Machinery Import & Export Corp., Ltd. | |
| Shaanxi Machinery I/E Corp Sunway Engineering Supply Co. | |
| Shandong Furun Co., Ltd. | |
| Shandong Huarong General Group Corp (Huarong) | |
| Shandong Jinma Industrial Group Company (Jinma) | |
| Shandong Junan Jinli Tool Co. | |
| Shandong Laoling Tools Factory | |
| Shandong Linyi Huanyu Hartware Tools | |
| Shandong Machinery Import & Export Corp Hangzhou Office | |
| Shandong Machinery Import and Export Corporation (SMC) | |
| Shandong Pangu Tools Co., Ltd. (Laoling Pangu) | |
| Shandong Rizhao Import & Export Corp. | |
| Shandong Technical Import and Export Corporation | |
| Shanghai Founder Co., Ltd. | |
| Shanghai J.E. Tools | |
| Shanghai Tongrun Import & Export Co., Ltd. | |
| Shenzhen Orbit Industrial Development Co., Ltd. | |
| Shenzhen Sino-Tech Enterprise Development Co., Ltd. | |
| Stanley (Zhongshan) Hardware Co., Ltd. | |
| Sun-Rain Stationery & Gifts Co., Ltd. | |
| Taian Foreign Trading General Corp. | |
| Technology Import & Export Corp. | |
| Tianjin Machinery Imp. & Exp. Group | |
| Tianjin Machinery Import and Export Corporation (TMC) | |
| TRTOOLS | |
| Wuxi Honghong Trade Co. | |
| Xian Zenith | |
| Xuzhou Golden Tiger Tools Making Co., Ltd. | |
| Yansheng International Trade Co., Ltd. | |
| Yee Hing Industry Co. | |
| Yongkang Tianfang Trade & Industry Co., Ltd. | |
| Yongkang Zhiying Xindong Stainless Steel Appliance Factory | |
| Zhangjiagang Free Trade Zone Tianrui Int'l Trade Co., Ltd. | |
| Zhejian Yongkang Bugao Hardware Tools Manufacture Co., Ltd. | |
| Zhejiang Shaoxing Hardware's Tools Factory | |
| Zhejiang Yongkang Bugao Hardware & Tools Manufacture Co. | |
| Zhejiang Yongkang Jinchui Tools Co., Ltd. | |

| | Period to be reviewed |
|---|---|
| Zhejiang Yongkang Steel Magnesium Co., Ltd. | |
| Zhejiang Yongkang Zhengfa Mechanical Manufacturing Company | |
| Zhenkiang All Joy Light Industrial Products & Textiles Import & Export Co., Ltd. | |
| Zhenjiang Foreign Trade Group Corp. | |
| Zibo International Economic and Technical Coop. Corp. | |
| *The People's Republic of China:* Bars/wedges*—A–570–803 | 2/1/02–1/31/03 |
| Adamant | |
| Baogui South/North Tools Shop | |
| BND Co., Ltd. | |
| Changlu Hardware Goods Factory | |
| Changzhou Light Industrial Tools Works | |
| Changzhou Satellite Metal Products Co., Ltd. | |
| Changzhou Xinhua Metal Factory | |
| China Hunan Jiahe General Forging Factory | |
| China National Import and Export Corp. (CMC) | |
| Dawn International Trade Co., Ltd. | |
| Easyuse Tools Industrial Co., Ltd. | |
| Feixian Harewaretool Factory | |
| Ferly Pacific Trading (Ningbo) Co., Ltd. | |
| Fujian Machinery and Equipment Import and Export Corp. (FMEC) | |
| G & M Hardware Tools Co., Ltd. | |
| Handysmart Enterprises | |
| Hangzhou Donghua Power Transmission Import & Export Co., Ltd. | |
| Huanyu Hardware Tools Factory | |
| Hebei Huatai Import & Export Corp. | |
| Hebei Machinery Import & Export Corp. | |
| Henan Jiaozuo Foreign Trade Corp. | |
| Henan Jinan Agriculture Production Corp. | |
| Hua Guang Hoe Factory of Jiahe Hunan Province | |
| Huadu Light Industry Co., Ltd. | |
| Huanyu Hardware Tools Factory | |
| Hubei Province Manufactory of Export Agricultural Tools | |
| Hunan Xinyu Native Produce and Animal By-Products Import & Export Ltd. | |
| JY International Corp. | |
| JB International Trading Co., Ltd. | |
| Jiangsu Guotai International Group HUATAI Imp. & Exp. Co., Ltd. | |
| Jiangsu Hongbao Group Co., Ltd. | |
| Jiangsu Jurong Tools Factory | |
| Jiangsu Tongrun M & E Group Import & Export Co., Ltd. | |
| Jinhua Runua Foreign Trade Co., Ltd. | |
| Jinhua Twin Star Tools Corporation Limited | |
| Liawu | |
| Laoling Pangu Tools | |
| Laoling Zhengtai | |
| Liaoning Machinery Import and Export Corp. (LMC) | |
| LIMAC | |
| Linshu Goldstar Group Co., Ltd. | |
| Linshu Jinrun Ironware & Tools Co., Ltd. | |
| Linyi Guoxin Tools Co., Ltd. | |
| Longcheng Tools Group | |
| Longway Tools Company, Ltd. | |
| Maofa | |
| Ningbo Feiyuan International Trade Co., Ltd. | |
| Ningbo Tiangong Tools Company, Ltd. | |
| Ningbo Tiger Handware Manufacture Co. | |
| Pangu Tools Co., Ltd. | |
| Remein | |
| Saintly International Group Jiangsu Machinery Import & Export Corp., Ltd. | |
| Shaanxi Machinery I/E Corp Sunway Engineering Supply Co. | |
| Shandong Furun Co., Ltd. | |
| Shandong Huarong General Group Corp (Huarong) | |
| Shandong Jinma Industrial Group Company (Jinma) | |
| Shandong Junan Jinli Tool Co. | |
| Shandong Laoling Tools Factory | |
| Shandong Linyi Huanyu Hartware Tools | |
| Shandong Machinery Import & Export Corp Hangzhou Office | |
| Shandong Machinery Import and Export Corporation (SMC) | |
| Shandong Pangu Tools Co., Ltd. (Laoling Pangu) | |
| Shandong Rizhao Import & Export Corp. | |
| Shandong Technical Import and Export Corporation | |
| Shanghai Founder Co., Ltd. | |
| Shanghai J.E. Tools | |
| Shanghai Tongrun Import & Export Co., Ltd. | |
| Shenzhen Orbit Industrial Development Co., Ltd. | |

| | Period to be reviewed |
|---|---|
| Shenzhen Sino-Tech Enterprise Development Co., Ltd. | |
| Stanley (Zhongshan) Hardware Co., Ltd. | |
| Sun-Rain Stationery & Gifts Co., Ltd. | |
| Taian Foreign Trading General Corp. | |
| Technology Import & Export Corp. | |
| Tianjin Machinery Imp & Exp Group | |
| Tianjin Machinery Import and Export Corporation (TMC) | |
| TRTOOLS | |
| Wuxi Honghong Trade Co. | |
| Xian Zenith | |
| Xuzhou Golden Tiger Tools Making Co., Ltd. | |
| Yansheng International Trade Co., Ltd. | |
| Yee Hing Industry Co. | |
| Yongkang Tianfang Trade & Industry Co., Ltd. | |
| Yongkang Zhiying Xindong Stainless Steel Appliance Factory | |
| Zhangjiagang Free Trade Zone Tianrui Int'l Trade Co., Ltd. | |
| Zhejian Yongkang Bugao Hardware Tools Manufacture Co., Ltd. | |
| Zhejiang Shaoxing Hardware's Tools Factory | |
| Zhejiang Yongkang Bugao Hardware & Tools Manufacture Co. | |
| Zhejiang Yongkang Jinchui Tools Co., Ltd. | |
| Zhejiang Yongkang Steel Magnesium Co., Ltd. | |
| Zhejiang Yongkang Zhengfa Mechanical Manufacturing Company | |
| Zhenkiang All Joy Light Industrial Products & Textiles Import & Export Co., Ltd. | |
| Zhenjiang Foreign Trade Group Corp. | |
| Zibo International Economic and Technical Coop. Corp. | |
| *The People's Republic of China:* Hammers/sledges*—A–570–803 | 2/1/02–1/31/03 |
| Adamant | |
| Baogui South/North Tools Shop | |
| BND Co., Ltd. | |
| Changlu Hardware Goods Factory | |
| Changzhou Light Industrial Tools Works | |
| Changzhou Satellite Metal Products Co., Ltd. | |
| Changzhou Xinhua Metal Factory | |
| China Hunan Jiahe General Forging Factory | |
| China National Import and Export Corp. (CMC) | |
| Dawn International Trade Co., Ltd. | |
| Easyuse Tools Industrial Co., Ltd. | |
| Feixian Harewaretool Factory | |
| Ferly Pacific Trading (Ningbo) Co., Ltd. | |
| Fujian Machinery and Equipment Import and Export Corp. (FMEC) | |
| G & M Hardware Tools Co., Ltd. | |
| Handysmart Enterprises | |
| Hangzhou Donghua Power Transmission Import & Export Co., Ltd. | |
| Huanyu Hardware Tools Factory | |
| Hebei Huatai Import & Export Corp. | |
| Hebei Machinery Import & Export Corp. | |
| Henan Jiaozuo Foreign Trade Corp. | |
| Henan Jinan Agriculture Production Corp. | |
| Hua Guang Hoe Factory of Jiahe Hunan Province | |
| Huadu Light Industry Co., Ltd. | |
| Huanyu Hardware Tools Factory | |
| Hubei Province Manufactory of Export Agricultural Tools | |
| Hunan Xinyu Native Produce and Animal By-Products Import & Export Ltd. | |
| JY International Corp. | |
| JB International Trading Co., Ltd. | |
| Jiangsu Guotai International Group HUATAI Imp. & Exp. Co., Ltd. | |
| Jiangsu Hongbao Group Co., Ltd. | |
| Jiangsu Jurong Tools Factory | |
| Jiangsu Tongrun M & E Group Import & Export Co., Ltd. | |
| Jinhua Runua Foreign Trade Co., Ltd. | |
| Jinhua Twin Star Tools Corporation Limited | |
| Liawu | |
| Laoling Pangu Tools | |
| Laoling Zhengtai | |
| Liaoning Machinery Import and Export Corp. (LMC) | |
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| Linyi Guoxin Tools Co., Ltd. | |
| Longcheng Tools Group | |
| Longway Tools Company, Ltd. | |
| Maofa | |
| Ningbo Feiyuan International Trade Co., Ltd. | |
| Ningbo Tiangong Tools Company, Ltd. | |

| | Period to be reviewed |
|---|---|
| Ningbo Tiger Handware Manufacture Co. | |
| Pangu Tools Co., Ltd. | |
| Remein | |
| Saintly International Group Jiangsu Machinery Import & Export Corp., Ltd. | |
| Shaanxi Machinery I/E Corp Sunway Engineering Supply Co. | |
| Shandong Furun Co., Ltd. | |
| Shandong Huarong General Group Corp (Huarong) | |
| Shandong Jinma Industrial Group Company (Jinma) | |
| Shandong Junan Jinli Tool Co. | |
| Shandong Laoling Tools Factory | |
| Shandong Linyi Huanyu Hartware Tools | |
| Shandong Machinery Import & Export Corp Hangzhou Office | |
| Shandong Machinery Import and Export Corporation (SMC) | |
| Shandong Pangu Tools Co, Ltd. (Laoling Pangu) | |
| Shandong Rizhao Import & Export Corp. | |
| Shandong Technical Import and Export Corporation | |
| Shanghai Founder Co., Ltd. | |
| Shanghai J.E. Tools | |
| Shanghai Tongrun Import & Export Co., Ltd. | |
| Shenzhen Orbit Industrial Development Co., Ltd. | |
| Shenzhen Sino-Tech Enterprise Development Co., Ltd. | |
| Stanley (Zhongshan) Hardware Co., Ltd. | |
| Sun-Rain Stationery & Gifts Co., Ltd. | |
| Taian Foreign Trading General Corp. | |
| Technology Import & Export Corp. | |
| Tianjin Machinery Imp & Exp Group | |
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| Wuxi Honghong Trade Co. | |
| Xian Zenith | |
| Xuzhou Golden Tiger Tools Making Co., Ltd. | |
| Yansheng International Trade Co., Ltd. | |
| Yee Hing Industry Co. | |
| Yongkang Tianfang Trade & Industry Co., Ltd. | |
| Yongkang Zhiying Xindong Stainless Steel Appliance Factory | |
| Zhangjiagang Free Trade Zone Tianrui Int'l Trade Co., Ltd. | |
| Zhejian Yongkang Bugao Hardware Tools Manufacture Co., Ltd. | |
| Zhejiang Shaoxing Hardware's Tools Factory | |
| Zhejiang Yongkang Bugao Hardware & Tools Manufacture Co. | |
| Zhejiang Yongkang Jinchui Tools Co., Ltd. | |
| Zhejiang Yongkang Steel Magnesium Co., Ltd. | |
| Zhejiang Yongkang Zhengfa Mechanical Manufacturing Company | |
| Zhenkiang All Joy Light Industrial Products & Textiles Import & Export Co., Ltd. | |
| Zhenjiang Foreign Trade Group Corp. | |
| Zibo International Economic and Technical Coop. Corp. | |
| *The People's Republic of China:* Picks/mattocks*—A–570–803 | 2/1/02–1/31/03 |
| Fujian Machinery & Equipment Import & Export Corp. | |
| Liaoning Machinery Import & Export Corp. | |
| Shandong Huarong General Group Corp | |
| Shandong Jinma Industrial Group Company | |
| Shandong Machinery Import & Export Corp. | |
| Tianjin Machinery Import & Export Corp. | |

* If one of the above named companies does not qualify for a separate rate, all other exporters of certain heavy forged hand tools from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity of which the named exporters are a part.

| | |
|---|---|
| *The People's Republic of China:* Certain Preserved Mushrooms [1]—A–570–851 | 2/1/02–2/31/03 |
| China Processed Food Import & Export Co. | |
| Gerber Food (Yunnan) Co., Ltd. | |
| Green Fresh Foods (Zhangzhou) Co., Ltd. | |
| Guangxi Yulin Oriental Food Co., Ltd. | |
| Raoping Xingyu Foods Co., Ltd. | |
| Shantou Hongda Industrial General Corporation | |
| Shenxian Dongxing Foods Co., Ltd. | |
| Shenzhen Qunxingyuan Trading Co., Ltd. | |
| Xiamen Zhongjia Imp. & Exp. Co., Ltd. | |
| Zhangzhou Jingxiang Foods Co., Ltd. | |
| Zhangzhou Longhai Minhui Industry and Trade Co., Ltd. | |
| *The People's Republic of China:* Creatine [2]—A–570–852 | 2/1/02–1/31/03 |
| Suzhou Sanjian Nutrient & Health Products Co., Ltd. | |
| *The People's Republic of China:* Potassium Permanganate [3]—A–570–001 | 1/1/02–12/31/02 |
| Groupstars Chemicals Co., Ltd. (Shandong)** | |
| Groupstars Chemicals Co., Ltd. (Yunnan)** | |

| | Period to be reviewed |
|---|---|
| Yunnan Jianshui County Chemical Industry Factory**<br>Jianshui Chemical Plant (also translated as Jianshui Chemical Factory and Jianshui General Chemical Plant)** | |

** Inadvertently omitted from previous notice.

| | |
|---|---|
| **Countervailing Duty Proceedings** | |
| *France:* Low Enriched Uranium—C–427–819<br>Eurodif S.A. | 5/14/01–12/31/02 |
| *Germany:* Low Enriched Uranium—C–428–829<br>Urenco Deutdschland GmbH | 5/14/01–12/31/02 |
| *Republic of Korea:* Certain Cut-to-Length Carbon-Quality Steel Plate—C–580–837<br>Dongkuk Steel Mill Co., Ltd.<br>KISCO—Korea Iron & Steel Co., Ltd.<br>Union Steel Manufacturing Co. | 1/1/02–12/31/02 |
| *The Netherlands:* Low Enriched Uranium—C–421–809<br>Urenco Nederland BV | 5/14/01–12/31/02 |
| *United Kingdom:* Low Enriched Uranium—C–412–821<br>Urenco (Capenhurst) Ltd. | 5/14/01–12/31/02 |
| **Suspension Agreements** | |
| None. | |

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of certain preserved mushrooms from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If the above named company does not qualify for a separate rate, all other exporters of creatine from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of potassium permanganate from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

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

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

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

Dated: March 18, 2003.

**Thomas F. Futtner,**

*Acting Senior Office Director, Group II, Office 4, Import Administration.*

[FR Doc. 03–7059 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## Federal Consistency Appeal by Islander East Pipeline Company From an Objection by the Connecticut Department on Environmental Protection

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

**ACTION:** Notice of stay of appeal proceedings.

**SUMMARY:** This notice: (1) Announces that processing of Islander East's administrative appeal (Consistency Appeal of Islander East Pipeline Company, L.L.C.) has been suspended, at the request of Islander East Pipeline Company and the State of Connecticut, through May 1, 2003; and (2) provides information about procedural aspects of the appeal that are affected by the stay of appeal proceedings.

**DATES:** The stay of appeal proceedings extends through May 1, 2003. The public comment period ends on May 8, 2003, but will extended assuming processing of the appeal resumes. The federal agency comment period has been extended to run through May 1, 2003, and will be further extended after the appeal has recommended.

**ADDRESSES:** All e-mail comments on issues relevant to the Secretary's decision of this appeal may be submitted to *IslanderEast.comments@noaa.gov.* Comments may also be sent by mail to the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910. Materials from the appeal record are available at the Internet site *http://www.ogc.doc.gov/czma.htm* and at the Office of the General Counsel for Ocean Services. Also, public filings made by the parties of the appeal are to be available for review at the Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, CT.

**FOR ADDITIONAL INFORMATION CONTACT:** Branden Blum, Senior Counselor, NOAA Office of the General Counsel, via e-mail at *GCOS.inquiries@noaa.gov,* or at 301–713–2967, extension 186.

**SUPPLEMENTARY INFORMATION:** In November 2002, the Islander East Pipeline Company, L.L.C. (Islander East) filed a notice of appeal with the Department of Commerce, pursuant to the Coastal Zone Management Act of 1972 (CZMA), as amended, asking that the Secretary of Commerce override the State of Connecticut's objection to Islander East's proposed natural gas pipeline. The pipeline would extend from near North Haven, Connecicut, across the Long Island Sound to a terminus in Suffolk County (Long Island), New York. Connecticut's objection is based on the project's potential effects on the natural resources or land and water uses of Connecticut's coastal zone.

On March 14, 2003, Islander East requested, on behalf of itself and the State of Connecticut, that the Department's processing of the appeal be stayed in order to allow settlement negotiations to occur between the parties. The requested stay on March 17, 2003.

In addition to announcing the stay, this **Federal Register** notice provides information concerning procedural aspects of the Islander East appeal that are affected by the stay. The public comment period, which runs through May 8, 2003, will remain open during the stay. The federal agency comment period, which is scheduled to close on April 14, 2003, will remain open and be extended through May 1, 2003. After processing of the appeal resumes, both comment periods will be extended for a period generally commensurate with the length of the stay, taking into account the filing date for the State of Connecticut's initial brief. (The State's brief had been due on March 24, 2003. In light of the stay, the State's brief is now due 45 days after the appeal has recommenced.)

The scheduling of a public hearing on the appeal will be delayed until after processing of the appeal resumes, consistent with the request of Islander East and the State. A previous **Federal Register** notice indicated the location and date for the hearing would be announced in early March 2003. *See* 68 FR 5620.

A summary of relevant issues as well as additional background on the appeal appears in a January 24, 2003 **Federal Register** announcement, 68 FR 3513, a copy of which can be found at the Department of Commerce CZMA appeals Web site, *http://www.ogc.doc.gov/czma/htm.* The Web site also provides access to documents from the appeal record, such as the request to stay the proceedings of Islander East's appeal, and general information concerning the appeal process.

Questions about the stay for the Islander East appeal may be sent to NOAA via e-mail (*GCOS.inquiries@noaa.gov*)or made by telephone (301–713–2967, extension 186).

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: March 19, 2003.

**James R. Walpole,**

*General Counsel.*

[FR Doc. 03–7016 Filed 3–24–03; 8:45 am]

**BILLING CODE 3510–08–M**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 030403B]**

## Small Takes of Marine Mammals Incidental to Specified Activities; Taking of Ringed and Bearded Seals Incidental to On-ice Seismic Activities

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to ConocoPhillips Alaska Inc. (CPA) to take small numbers of ringed and bearded seals, by harassment, incidental to conducting on-ice seismic operations in the Beaufort Sea during oil and gas exploration activities.

**DATES:** This authorization is effective from March 19, 2003, through July 1, 2003.

**ADDRESSES:** A copy of the application and/or a list of references used in this document may be obtained by writing to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128, or Bradley Smith, Alaska Region (907) 271–5006.

**SUPPLEMENTARY INFORMATION:**

### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing IHAs under section 101(a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer either to that document or to 50 CFR 216.107.

### Description of the Activity

*Background*

Deep seismic surveys use the ''reflection'' method of data acquisition. Reflection seismic exploration is the process of gathering information about the subsurface of the earth by measuring acoustic (sound or seismic) waves, which are generated on or near the surface. Acoustic waves reflect at boundaries in the earth that are characterized by acoustic impedance contrasts. The acoustic impedance of a rock layer is its density multiplied by its acoustic velocity. Geologists and geophysicists commonly attribute different acoustic impedances to different rock characteristics. Seismic exploration uses a controlled energy source to generate acoustic waves that travel through the earth (including sea ice and water, as well as subsea geologic formations), and then uses ground sensors to record the reflected energy transmitted back to the surface. Energy that is directed into the ground takes on numerous forms. When acoustic energy is generated, compression (p) and shear (s) waves form and travel in and on the earth. The compression and shear waves are affected by the geological formations

of the earth as they travel in it and may be reflected, refracted, diffracted or transmitted when they reach a boundary represented by an acoustic impedance contrast.

The basic components of a seismic survey include an energy source (either acoustic or vibratory), which generates a seismic signal; hydrophones or geophones, which receive the reflected signal; and electronic equipment to amplify and record the signal. The number and placement of sensors, the energy sources, the spacing and placement of energy input locations, and the specific techniques of recording reflected energy are broadly grouped as ''parameters'' of a given exploration program.

In modern reflection seismology, many sensors are used to record each energy input event. The number of sensors in use for each event varies widely according to the type of survey being conducted and the recording equipment available. Common numbers of groups of sensors are 240, 480, and 1040, and some new recording instruments may use as many as 4000 groups of sensors at the same time. The sensors are normally placed in one or more long lines at specified intervals. In North America the common group placement intervals are multiples of 55 ft (17 m), 110 ft (33.5 m) and 220 ft (67 m).

**Vibroseis**

Vibroseis seismic operations use large trucks with vibrators that systematically put variable frequency energy into the earth. At least 1.2 m (4 ft) of sea ice is required to support heavy vehicles used to transport equipment offshore for exploration activities. These ice conditions generally exist from 1 January until 31 May in the Beaufort Sea. The exploration techniques are most commonly used on landfast ice, but they can be used in areas of stable offshore ice. Several vehicles are normally associated with a typical vibroseis operation. One or two vehicles with survey crews move ahead of the operation and mark the energy input points. Crews with rubber-tire or rubber-track vehicles often require trail clearance with bulldozers for adequate access to and within the site. Crews with rubber-tracked vehicles are typically limited by heavy snow cover, and may require trail clearance beforehand.

A typical wintertime exploration seismic crew consists of 40–110 personnel. Roughly 75 percent of the personnel routinely work on the active seismic crew, with approximately 50 percent of those working in vehicles and the remainder outside laying and retrieving geophones and cable. A camp unit is usually associated with a seismic survey project and will consist of 4–5 sleeper/office trailers, a kitchen/diner trailer, two shop/generator trailers, fuel sleighs and a small survival trailer (BP, 1997). Camp trailers are usually mounted on wide-pad sleighs. It is common to survey and plow ''communication'' roads on sea ice for vehicles to travel to and from the camp.

With the vibroseis technique, activity on the surveyed seismic line begins with the placement of sensors. All sensors are connected to the recording vehicle by multi-pair cable sections. The vibrators move to the beginning of the line, and recording begins. The vibrators move along a source line, which will be at some angle to a sensor line. The vibrators begin vibrating in synchrony via a simultaneous radio signal to all vehicles.

In a typical survey, each vibrator will vibrate four times at each location. The entire formation of vibrators subsequently moves forward to the next energy input point (e.g., 67 m (220 ft) in most applications) and repeat the process. In a typical 16- to 18–hour day, 4 to 10 linear mi (6 to 16 km) in 2D-seismic operations and 15 to 40 linear mi (24 to 64 km) in a 3D-seismic operation are conducted. A detailed description of the work proposed for 2003 is contained in this document and in the application which is available upon request (see **ADDRESSES**).

**Summary of the Request**

On October 3, 2002, CPA submitted an application to NMFS for an IHA for the taking of ringed seals (*Phoca hispida*) and bearded seals (*Erignathus barbatus*) for a period of 5 months beginning January 1 (upon the expiration of the existing regulations covering the Alaskan North Slope on 31 December 2002 (63 FR 5277, February 2, 1998)) and ending on about May 31, 2003. On-ice seismic operations are ordinarily confined to this 5–month period since this is the period when ice is sufficiently thick (4 - 5 ft; 1.2 - 1.5 m) to safely support the equipment.

The geographic region of activity in 2003 encompasses an 846–square mile (2,190 $km^2$) area extending from approximately Cape Halkett on the west to Oliktok Point on the east and to approximately 4–20 nm (7.4 – 37 km) offshore the coast. Water depths in most (> 60 percent) of the area are less than 10 ft (3 m), but drop to 30 ft (9 m) along the northern fringe of the region of activity. Few seals inhabit water less than 10 ft (3 m) during winter, since water typically freezes to or near the bottom at this depth or what water is available supports few food resources (Miller *et al.*, 1998 and Link *et al.*, 1999).

**Comments and Responses**

A notice of receipt of the application and proposed authorization was published on December 31, 2002 (67 FR 79565), and a 30–day public comment period was provided on the application and proposed authorization. Comments were received from the Marine Mammal Commission (MMC) and the Alaska Eskimo Whaling Commission (AEWC).

*Comment 1:* The AEWC disagrees with NMFS' statement in its notice of receipt and proposed authorization that Nuiqsut hunters are most likely to take ringed seals during the open water season. The AEWC notes that this conclusion is based on two studies and harvest data collected in one year, 1992. They state, ''While many events, including the availability of seasonal construction work, may affect subsistence patterns from year to year, NMFS certainly is aware of the fact that subsistence hunting is an opportunistic activity. Ignoring this fact for even a seemingly low impact activity sets a dangerous precedent for subsistence hunters.''

*Response:* NMFS is required to incorporate the best scientific and commercial information (including traditional knowledge) currently available when making a determination that an activity will not have more than a negligible impact on affected marine mammal species nor have an unmitigable adverse impact on subsistence needs for marine mammals. In 50 CFR 216.103, NMFS provides its definition for what is an ''unmitigable adverse impact.''

The study cited by NMFS in the **Federal Register** and by the commenter was a 1996 analysis conducted by the North Slope Borough (NSB), presumably based on 1992 harvest data. While this is only a single year of harvest data, that information is consistent with previous statements made by NMFS as several small take applicants for wintertime activities in the Beaufort Sea have provided subsistence harvest data used by NMFS in previous authorizations (NMFS, 1998; 62 FR 5564 (October 27, 1997), and this document). NMFS would therefore appreciate any updated information for use in future small take authorizations.

*Comment 2:* The AEWC recommends a reasonable mitigation measure. As NMFS notes, the Nuiqsut hunters take ringed seals primarily in the Colville River Delta. As more daylight becomes available during the spring, subsistence

hunting of all types tends to increase. Therefore, a reasonable compromise between CPA's seismic work and ringed seal hunting by Nuiqsut hunters would be for CPA to begin their work in the eastern portion of Harrison Bay and work westward. This will reduce the probability that ringed seal hunters who have an opportunity to hunt during the spring will encounter seismic operations that might interfere with their seal hunting.

*Response:* NMFS has included this recommendation in the subject IHA and will suggest such a strategy for future vibroseis activities in Harrison Bay. However, such a recommendation is contingent upon favorable ice conditions permitting an east-to-west mapping strategy. As a result, NMFS has made this a recommendation, not a requirement in the IHA. NMFS notes however, that the IHA requires CPA to communicate with the village of Nuiqsut as to location and timing of activities.

*Comment 3:* The AEWC also recommends a refinement of the previous mitigation measure might also reduce the chance that this seismic work could affect migrating bowhead whales. The AEWC recommends that CPA be required to first complete all work in waters where the depth is greater than three m (9.8 ft) (moving east to west), then go on to their work in waters where the depth is less than 3 m (9.8 ft).

*Response:* In general, NMFS believes that ice conditions would preclude working from deeper water landward early in the season. Vibroseis activities require a minimum ice depth of 3 to 4 ft (0.9 to 1.2 m) to support the equipment, therefore, standard operations are to move from shore onto grounded ice first, then moving offshore as conditions permit. However, because ringed seals are not normally found in water depths less than 3 m (0.9 ft), and because after about March 20, neonatal ringed seal pups may be exposed to vibroseis sounds, this recommendation has merit to mitigate impacts to adult ringed seals and pups. As a result, NMFS has added this recommendation to the IHA, recognizing that such a strategy would depend upon ice conditions and seismic survey objectives.

The effective source level of vibroseis sounds for horizontal propagation in shallow under ice waters, while uncertain, may at times be as high as 212 dB re (Malme *et al.*, 1989). Received levels would be expected to diminish below 180 dB within 100 m (328 ft)(BP, 1997). Holliday *et al.* (1984) as cited in Richardson *et al.* (1995) estimated that in-water vibroseis sounds would diminish to the ambient noise level (about 70 dB) at distances of 3.5 to 5 km (2.2 to 3.1 mi). Since the spring leads tend north and east of Pt. Barrow, NMFS believes that Harrison Bay would be well south of any such lead, even during unusually open conditions. As a result, NMFS does not believe that vibroseis sounds would reach the offshore leads and influence bowhead whale behavior.

*Comment 4:* The AEWC recommends that CPA should be required to work out a Conflict Avoidance Agreement (CAA) with the AEWC to ensure that there is no impact to the bowhead migration. The issues that the AEWC will focus on are timing and location of the late-season activities.

*Response:* Based on the response to comment 3, NMFS does not believe that there will be any impact to bowhead whales because of the distance between vibroseis operations and the offshore leads used by bowheads during their eastward migration. Generally, CAAs are limited to activities that have the potential to disturb bowheads just prior to, and during the bowhead subsistence hunt and therefore, would be subject for discussion and resolution during the CAA negotiations. Therefore, because the CAA is intended to reduce impacts to the subsistence harvest of bowhead whales, if bowhead whales are unlikely to be taken, a CAA is not warranted. Finally, NMFS is unaware that there is a spring harvest of bowhead whales in the offshore waters of Harrison Bay that would warrant NMFS encouraging CPA to seek resolution of impacts on the bowhead harvest. It should be noted that a CAA is a formal agreement between the activity's participants and the AEWC. NMFS does not play a role in its development or implementation.

*Comment 5:* The MMC believes that the preliminary determinations made by NMFS seem reasonable provided that, prior to commencing on-ice seismic surveys after mid-March, a survey using experienced field personnel and trained dogs be conducted to identify potential seal structures along the planned on-ice seismic transmission routes. As noted in previous MMC correspondence, the MMC believes that the use of trained dogs is the only reliable method for locating seal lairs and other structures.

*Response:* As noted in CPA's application, and confirmed by CPA during the October 30, 2002, CPA will utilize trained dogs for any offshore vibroseis work that takes place after March 20, 2003, in waters ≥ 3 m (9.8 ft).

*Comment 6:* The MMC believes that in the event that trained dogs are not available, NMFS should not accept monitoring by humans as an alternative until it has been demonstrated that such monitoring is as effective as that carried out using dogs.

*Response:* NMFS does not agree with the recommendation of the MMC. There are only one or two individuals available in Alaska that have dogs trained to locate ringed seal lairs. These individuals may also have work, such as conducting scientific research, that would make them unavailable for monitoring at the precise time they might be needed. NMFS believes that, if necessary, trained dogs should be available first to activities that have the greatest potential for injury or mortality to ringed seals and/or their young, such as construction of ice roads.

*Comment 7:* The MMC also notes that CPA is planning to conduct surveys to a distance of 150 m (492 ft) on each side of all transit routes and recommends that such surveys be made a requirement of the IHA.

*Response:* This mitigation measure was proposed by CPA and has been incorporated by NMFS into CPA's IHA.

*Comment 8:* The MMC recommends that should a mortality or serious injury of a seal occur, the authorization specify that operations be suspended while NMFS determines whether steps can be taken to avoid further injuries or mortalities or whether an incidental take authorization under section 101(a)(5)(A) of the MMPA to cover such taking is needed.

*Response:* Since the taking by serious injury or mortality of ringed seals, or any taking of any other species of marine mammals is prohibited under this IHA, any incidents must be reported to the Regional Administrator, NMFS, or his designee, immediately. As stated in the IHA, takings in violation of the IHA may result in the modification, suspension or revocation of the IHA, depending upon the initial determination of the Regional Administrator.

*Comment 9:* Even though the effects of the activities proposed by the applicant, by themselves, are likely to be negligible, the MMC is concerned that the cumulative impacts of such activities in combination with similar activities being carried out elsewhere in the Beaufort Sea may, at some point, have more than negligible impacts on marine mammal populations. As such, the MMC recommends that the monitoring programs for such activities be expanded to enable NMFS to assess whether and, if so, to what extent long-term, cumulative effects may be occurring. Such information is essential for ensuring that subtle changes occurring over short periods of time (i.e., seasonally or annually) do not have

more than negligible impacts over longer time periods.

*Response:* Under section 101(a)(5)(D) of the MMPA, an applicant is responsible for conducting a monitoring program to provide information on whether its activity is having more than a negligible impact on affected species and stocks of marine mammals. There is no requirement for conducting monitoring to determine whether all activities in the Beaufort Sea might some day have a significant cumulative impact on marine mammals, a term recognized under the National Environmental Policy Act (NEPA).

As required by regulations and MMPA, on October 30, 2002, CPA's proposed monitoring plan was peer-reviewed and accepted by the participants at the peer-review workshop held in Anchorage, AK (Angliss (ed), 2002). This workshop was the fourth in recent years to discuss impacts of on-ice activities on marine mammals. At this meeting, NMFS recommended that the industry set up a research fund through an independent organization, such as the National Fish and Wildlife Federation or NOAA Sea Grant. A competitive process for directed funds might encourage marine mammal scientists to develop creative ways to get a better handle on site-specific and cumulative impacts on seals resulting from winter-time activities. The industry suggested that this should be a cooperative undertaking between government and industry. Participants indicated that they would continue to discuss this concept at future meetings.

It should be recognized that research and monitoring of Beaufort Sea marine mammals are also conducted by government agencies, or through government agency funding. This includes, for example, MMS' aerial bowhead whale surveys, an annual population assessment survey for bowhead whales, a study on contaminant levels in bowhead whale tissue, and a bowhead whale health assessment study. These latter three studies are funded by or through NMFS. Information on these projects has been provided in the past to the MMC by NMFS. Based on this multi-faceted monitoring program, NMFS has determined that the monitoring programs for both open-water and wintertime are adequate to identify impacts on marine mammals, both singly from the project and cumulatively throughout the industry.

*Comment 10:* The MMC believes that important types of long-term information should be gathered as part of the required monitoring plan including data on potential changes in density and abundance of potentially affected marine mammals, reproductive rates, foraging patterns, distribution, and contamination levels where oil and gas exploration, development, and production occurs.

*Response:* See response to comment 7. NMFS would welcome the participation of the MMC and/or its scientific advisors at its twice-annual peer-review meetings held to discuss monitoring proposed to be undertaken by Arctic-activity applicants for authorizations under section 101(a)(5) of the MMPA. In addition, NMFS would welcome suggestions from the MMC on future methodology to economically assess the suggested parameters for ice-seals during the Arctic winter.

**Description of Habitat and Marine Mammals Affected by the Activity**

A detailed description of the Beaufort Sea ecosystem can be found in several documents (Corps of Engineers, 1999; NMFS, 1999; Minerals Management Service (MMS), 1992, 1996, 2001) and is not repeated here.

**Marine Mammals**

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga (*Delphinapterus leucas*), ringed seals, spotted seals (*Phoca largha*) and bearded seals. Descriptions of the biology and distribution of these species and of others can be found in NMFS (1998, 1999), Western Geophysical (2000) and several other documents (Corps of Engineers, 1999; Lentfer, 1988; MMS, 1992, 1996; Angliss *et al.* (2001)). Angliss et al. (2001) is available online at:*http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html#Stock Assessment Reports*.

Ringed and, to a lesser degree, bearded seals could be affected by on-ice seismic activities. These species as well as other marine mammal species in the Beaufort Sea appear to have stable to increasing populations, which is a condition indicative of a healthy ecosystem. Polar bears, which prey on these species, are believed to be stable or increasing in numbers in the Beaufort Sea (U.S. Fish and Wildlife Service (USFWS), 2000 a, b). Similarly, the most recent estimate of bowhead whales shows the population has steadily increased annually at a growth rate of 3.2–3.3 percent to 9,860 (7,700–12,600) animals (International Whaling Commission, 2002). These increases are occurring in concert with subsistence harvest of these species including a 5–year harvest quota of 255 bowheads. The status of these marine mammal populations reflects the high quality of the habitat, which supports abundant and diverse prey populations.

Ringed seals are year-round residents in the Beaufort Sea. They are the most abundant and widely distributed species of marine mammal in the Beaufort Sea (Frost *et al.*, 1988). The world-wide population is estimated at 6 to 7 million (Stirling and Calvert, 1979). The Alaska stock of the Bering-Chukchi-Beaufort Sea area is roughly estimated at between 1 to 1.5 (Frost, 1985) to 3.3 to 3.6 million seals (Frost *et al.*, 1988). Although there are no recent population estimates in the Beaufort Sea, Bengston *et al.* (2000) estimated ringed seal abundance from Barrow south to Shismaref in a portion of the Chukchi Sea to be 245,048 animals from aerial surveys flown in 1999. In Angliss *et al.* (2001), marine mammal scientists state that there are at least that many ringed seals in the Beaufort Sea. Frost *et al.* (1999) reported that observed densities within the area of industrial activity along the Beaufort Sea coast were generally similar between 1985–87 and 1996–98, suggesting that the regional population has been relatively stable during this 13–year period of industrial activity.

During winter and spring, ringed seals inhabit landfast ice and offshore pack ice. Seal densities are highest on stable landfast ice but significant numbers of ringed seals also occur in pack ice (Wiig *et al.*, 1999). Seals congregate at holes and along cracks or deformations in the ice (Frost *et al.*, 1999). Breathing holes are established in landfast ice as the ice forms in autumn and maintained by seals throughout the winter. Adult ringed seals maintain an average of 3.4 holes per seal (Hammill and Smith, 1989). Some holes may be abandoned as winter advances, probably in order for seals to conserve energy by maintaining fewer holes (Brueggeman and Grialou, 2001). As snow accumulates, ringed seals excavate lairs in snowdrifts surrounding their breathing holes, which they use for resting and for the birth and nursing of their single pups in late March to May (McLaren, 1958; Smith and Stirling, 1975; Kelly and Quakenbush, 1990). Pups have been observed to enter the water, dive to over 10 m (32.8 ft), and return to the lair as early as 10 days after birth (Brendan Kelly, personal communication, June 2002), suggesting pups can survive the cold water temperatures at a very early age. Mating occurs in late April and May. From mid-May through July, ringed seals haul out in the open air at

holes and along cracks to bask in the sun and molt.

The seasonal distribution of ringed seals in the Beaufort Sea is affected by a number of factors, but a consistent pattern of seal use has been documented since monitoring began over 20 years ago by using aerial surveys. Seal densities have historically been substantially lower in the western than the eastern part of the Beaufort Sea (Burns and Kelly, 1982; Kelly, 1988). Frost *et al.* (1999) reported consistently lower ringed seal densities in the western versus eastern sectors they surveyed in the Beaufort Sea during 1996, 1997, and 1998. The relatively low densities appear to be related to much of the area occurring between the shore and the barrier islands, which is generally shallow. This area of historically low ringed seal density is also the focus for much of the recent on-ice seismic surveys.

The estimated number of ringed seals likely to be in the 846–mi² (2,190–km²) activity area is less than 3,900 animals. This estimate is based on a density of 1.73 seals per km², which was derived from the most current aerial surveys of the region. Frost and Lowry (1999) reported an observed density of 0.61 ringed seals per km² on the fast ice from aerial surveys conducted in spring 1997 of an area (Sector B2) overlapping the activity area, which is in the range of densities (0.28–0.66) reported for the Northstar project from 1997 to 2001 (Moulton *et al.*, 2001). This value (0.61) was adjusted to account for seals hauled out but not sighted by observers (x 1.22, based on Frost *et al.* (1988)) and seals not hauled out during the surveys (x 2.33, based on Kelly and Quakenbush (1990)) to obtain the density of 1.73 seals/km2. This estimate covered an area from the coast to about 2–20 miles beyond the activity area, and it assumed that habitat conditions were uniform and, therefore, it was not adjusted for water depth. Since a high proportion (≤ 60 percent) of the activity area is within water less than 3 m (9.8 ft) deep, which Moulton *et al.* (2001) reported for Northstar supported about five times fewer seals (0.12–0.13 seals/km²) than the 0.61 seals reported by Frost and Lowry, the actual number of ringed seals is probably closer to slightly more than half of the 3,900 seals or about 2,000 seals. This estimate is calculated as follows: (1) 1,314 km*2* x 0.13 x 1.22 x 2.33 = 486 seals in area having water depths of 0–3 meter (60 percent) in activity area; (2) 876 km*2* x 0.61 x 1.22 x 2.33 = 1,519 seals in area having water depths over 3 meters (40 percent) in activity area; and (3) combining the two numbers gives an estimate of 2,005 seals or approximately 2,000 for the entire activity area. Observed densities of ringed seals reported over 15 years ago in the region of the activity area from 1985 through 1987 (0.85, 1.09, and 1.11 seals per km2) were not used in this analysis, since an estimate was available within the last five years (Frost and Lowry, 1999).

The bearded seal inhabits the Bering, Chukchi, and Beaufort seas (Burns and Frost, 1979). Numbers are considerably higher in the Bering and Chukchi seas, particularly during winter and early spring. Early estimates of bearded seals in the Bering and Chukchi seas range from 250,000 to 300,000 (Popov, 1976; Burns, 1981). Reliable estimates of bearded seal abundance in Alaska waters are unavailable. Since there is no evidence of a decline in the population, the population is presumed to be healthy. Bearded seals are generally associated with pack ice and only rarely use shorefast ice (Burns and Harbo, 1972). Bearded seals occasionally have been observed maintaining breathing holes in annual ice and even hauling out from holes used by ringed seals (Mansfield, 1967; Stirling and Smith, 1977). However, since bearded seals are normally found in broken ice that is unstable for on-ice seismic operation, bearded seals will be rarely encountered during seismic operations.

There are no reliable estimates for bearded seals in the Beaufort Sea or in the activity area (Angliss *et al.*, 2001), but recent surveys show that few bearded seals inhabit the activity area during December through May. An indication of their low numbers is provided by the results of aerial surveys conducted east of the activity area near the Northstar and Liberty development sites. Three to 18 bearded seals were observed in these areas compared to 1,911 to 2,251 ringed seals in the spring of 1999 through 2001 (Moulton *et al.*, 2001; Moulton and Elliott 2000; Moulton *et al.*, 2000). Similarly small numbers of bearded seals would be expected to occur in the activity area, where habitat is even less favorable because of the high proportion of shallow water area.

**Potential Effects on Marine Mammals**

NMFS and CPA anticipate that only small numbers of ringed seals and, if encountered, very small numbers of bearded seals will be affected. Any takes that occur would result from short-term disturbances by noise and physical activity associated with on-ice seismic operations. While operations have the potential to disturb and temporarily displace some seals, any impacts will likely be confined to small numbers of seals in the immediate vicinity of the activities.

Burns and Kelly (1982) concluded that displacement of ringed seals in close proximity (within 150 m (492 ft)) to seismic lines does occur, and ringed seal pupping in shorefast ice habitats within this distance of an on-ice shot line in favorable ringed seal habitat are likely to be disturbed by vibroseis operations. However, considering (1) the limited area of seismic surveys, (2) the non-random distribution of ringed seals, (3) avoidance by seismic operator of optimal seal habitat (i.e., areas of extensive pressure ridging and snow accumulation) due to safety and operational constraints,(4) occurrence of most of the on-ice seismic surveys in shallow and near shore waters where ringed seal densities are low, (5) the relatively large size of the ringed seal population in the Beaufort Sea and throughout Alaska, and (6) the lack of evidence of on-ice seismic activity negatively affecting the reproductive viability or distribution of the ringed seal population, the disturbance is not likely to have any effect on the ringed or bearded seal populations as a whole.

Aerial survey data collected from 1985 to 1987 and 1997 indicate that ringed seal densities in the fast ice of the region of the activity area as well as among different section of the Beaufort Sea are highly variable among years (Frost *et al.*, 1999). The reported inter-annual variability in overall average density during these years in the region of the activity area was 0.61 to 1.11 seals per km². Based on an estimated rate of temporary displacement determined by Burns (1981) of 0.6 ringed seals per nm² (0.52 per mile) of area subjected to seismic activity, a maximum of 832 seals could be displaced from 1,600 mi (2,575 km) of seismic surveys assuming a uniform distribution. However, since the distribution is not uniform and most of the activity area is marginal habitat for ringed seals, considerably fewer seals would likely be temporarily displaced by the seismic operations. Furthermore, the proposed seismic operations will be concentrated in 143 mi² (378 km²) or about 17 percent of the 846 mi² (2,190 km²) activity area. Consequently, a more accurate maximum limit of the potential take of ringed seals by the proposed seismic operations is 340 (17 percent x 2000) seals, which would be considerably higher than any incidental take of seals in birthing lairs.

Pup mortality could occur if any of these animals were nursing and displacement was protracted. However, due to mitigation measures undertaken by the industry and because it is highly

unlikely that a nursing female would abandon her pup given the normal levels of disturbance from the proposed activities and the typical movement patterns of ringed seal pups among different holes as reported by Lydersen and Hammill (1993), pup mortality is unlikely. Similarly, Kelly and Quakenbush (1990) observed that radio-tagged seals used as many as four lairs spaced as far as 3,437 m (11,276 ft) apart, with mean distances for males equaling 1,997 m (6,552 ft) and for females 634 m (2,080 ft). In addition, seals have multiple breathing holes. Pups may use more holes than adults (mean 8.7), but the holes are generally closer together (Lydersen and Hammill, 1993). Holes have been found as far apart as 0.9 km (0.56 mi). This pattern of use indicates that adult seals and pups can move away from seismic activities, particularly since the seismic equipment does not remain in any specific area for a prolonged time. Given the small proportion (<1 percent) of the population potentially disturbed by the proposed activity, impacts are expected to be negligible for the overall ringed and also bearded seal populations.

Masking effects on pinniped vocalizations and other natural sounds are expected to be limited. Although pulse repetition rates will be high during vibroseis surveys, the source levels of those pulses will be considerably lower than during open-water seismic surveys. This will considerably reduce the potential for masking.

**Potential Effects on Subsistence**

Residents of the village of Nuiqsut are the primary subsistence users in the activity area. The subsistence harvest during winter and spring is primarily ringed seals, but during the open-water period both ringed and bearded seals are taken. Nuiqsut hunters may hunt year round; however, in more recent years most of the harvest has been in open water instead of the more difficult hunting of seals at holes and lairs (McLaren, 1958; Nelson, 1969). The most important area for Nuiqsut hunters is off the Colville River Delta, between Fish Creek and Pingok Island, which corresponds to approximately the eastern half to the activity area. Seal hunting occurs in this area by snow machine before spring break-up and by boat during summer. Subsistence patterns may be reflected through the harvest data collected in 1992 where Nuiqsut hunters harvested 22 of 24 ringed seals and all 16 bearded seals during the open water season from July to October (Fuller and George, 1997). Only a small number of ringed seals was harvested during the winter to early spring period, which corresponds to the time of the proposed on-ice seismic operations.

Based on harvest patterns and other factors, on-ice seismic operations in the activity area are not expected to have an unmitigable adverse impact on subsistence uses of ringed and bearded seals because:

(1) Operations would end before spring breakup, after which subsistence hunters harvest most of their seals.

(2) Operations would temporarily displace relatively few seals, since most of the habitat in the activity area is marginal to poor and supports relatively low densities of seals during winter. Displaced seals would likely move a short distance and remain in the area for potential harvest by native hunters (Frost and Lowry, 1988; Kelly *et al.*, 1988).

(3) The area where seismic operations would be conducted is small compared to the large Beaufort Sea subsistence hunting area associated with the extremely wide distribution of ringed seals.

In order to ensure the least practicable adverse impact on the species and the subsistence use of ringed seals, all activities will be conducted as far as practicable from any observed ringed seal structure, and crews will be required to avoid hunters and the locations of any seals being hunted in the activity area, whenever possible. Finally, the applicant will consult with subsistence hunters of Nuiqsut and provide the community, the North Slope Borough, and the Inupiat Community of the North Slope with information about its planned activities (timing and extent) before initiating any on-ice seismic activities.

**Mitigation**

Similar to work in previous years, NMFS expects the following mitigation will be undertaken by the applicant to ensure that any taking will be at the lowest level practicable. All activities will be required to be conducted in a manner that minimizes adverse effects on ringed and bearded seals and their habitat. Activities must be conducted as far as practicable from any observed ringed seals or ringed seal lair. For example, no energy source may be placed over an observed ringed seal lair and only vibrator-type energy-source equipment will be used. Seismic crews will receive training so that they can recognize potential ringed seal lairs and adjust their seismic operations. Furthermore, if seismic operations go beyond March 20, 2003 in waters ≥ 3 m (9.8 ft), a survey using trained dogs will be completed in all areas where surface blading will be conducted. This survey will identify all active seal holes/birthing lairs or hole/lair habitats so they can be avoided by seismic and camp operations to the greatest extent practicable. If trained dogs are not available, then the NMFS Regional Administrator or his designee will be promptly notified to determine possible alternative monitoring that would identify potential ringed seal habitat by trained marine mammal biologists based on the characteristics of the ice (i.e., deformation, cracks, etc.).

**Monitoring and Reporting**

Ringed seal pupping occurs in lairs from late March to mid-to-late April (Smith and Hammill, 1981). Prior to commencing on-ice seismic surveys after March 20th, a survey using experienced field personnel and trained dogs will be conducted to identify potential seal structures along the planned on-ice seismic transmission routes. The seal structure survey will be conducted before selection of precise transit routes to ensure that seals, particularly pups, are not injured by equipment. The locations of all seal structures will be recorded by Global Positioning System (GPS), staked, and flagged with surveyor's tape. Surveys will be conducted 150 m (492 ft) to each side of the transit routes. Actual width of route may vary depending on wind speed and direction, which strongly influence the efficiency and effectiveness of dogs locating seal structures. Survey will only be conducted in the portions of the activity area where water depths exceed 3 m (9.8 ft). Few, if any, seals inhabit ice-covered waters below 3 m (9.8 ft) due to water freezing to the bottom or poor prey availability caused by the limited amount of ice-free water.

The level of take, while anticipated to be negligible, will be assessed by conducting a second seal structure survey immediately after the end of the seismic surveys. A single on-ice survey will be conducted by biologists on snowmachines using a GPS to relocate and determine the status of seal structures located during the initial survey. The status (active vs. inactive) of each structure will be determined to assess the level of incidental take by seismic operations. The number of active seal structures abandoned between the initial survey and the final survey will be the basis for enumerating take. If dogs are not available for the initial survey, take will be determined by using observed densities of seal on ice reported by Moulton *et al.* (2001) for the Northstar project, which is

approximately 20 nm (37 km) from the eastern edge of the proposed activity area.

In the event that seismic surveys can be completed in that portion of the activity area ≥ 3 m (9.8 ft) before mid-March, no field surveys would be conducted of seal structures. Under this scenario, surveys would be completed before pups are born and disturbance would be negligible. Therefore, take estimates would be determined for only that portion of the activity area exposed to seismic surveys after March 20, which would be in water 3 m (9.8 ft) or less deep. Take for this area would be estimated by using the observed density (13/100 $km^2$) reported by Moulton *et al.* (2001) for water depths between 0 to 3 m (0 to 9.8 ft) in the Northstar project area, which is the only source of a density estimate stratified by water depth for the Beaufort Sea. This would be an overestimation requiring a substantial downward adjustment to reflect the actual take of seals using lairs, since few if any of the structures in these water depths would be used for birthing, and Moulton et al. (2001) estimate includes all seals. This monitoring program was reviewed at the fall 2002 on-ice meeting sponsored by the National Marine Mammal Laboratory, NMFS, in Seattle and found acceptable.

An annual report must be submitted to NMFS within 90 days of completing the year's activities.

**National Environmental Policy Act (NEPA)**

As a result of the information provided in EAs prepared in 1993 and 1998 for winter seismic activities, NOAA concluded that implementation of either the preferred alternative or other alternatives identified in the EA would not have a significant impact on the human environment. Therefore, an Environmental Impact Statement was not prepared. Accordingly, because the proposed action discussed in this document is not substantially different from the 1992 and 1998 actions, and because a reference search has indicated that no significant new scientific information or analyses have been developed in the past several years significant enough to warrant new NEPA documentation, this action is categorically excluded from further review under NOAA Administrative Order 216–6.

**Endangered Species Act (ESA)**

NMFS has determined that no species listed as threatened or endangered under the ESA will be affected by issuing an authorization under section 101(a)(5)(D) of the MMPA.

**Conclusions**

The anticipated impact of winter seismic activities on the species or stock of ringed and bearded seals is expected to be negligible for the following reasons:

(1) The activity area supports a small proportion (<1 percent) of the ringed seal populations in the Beaufort Sea;

(2) Most of the winter-run seismic lines will be on ice over shallow water where ringed seals are absent or present in very low abundance. Over 60 percent of the activity area is near shore and/or in water less than 3 m (9.8 ft) deep, which is generally considered poor seal habitat. Moulton *et al.* (2001) reported that only 6 percent of 660 ringed seals observed on ice in the Northstar project area were in water between 0 to 3 m (0 to 9.8 ft)deep.

(3) Seismic operators will avoid moderate and large pressure ridges, where seal and pupping lairs are likely to be most numerous, for reasons of safety and because of normal operational constraints;

(4) Many of the on-ice seismic lines and connecting ice roads will be laid out and explored during January and February, when many ringed seals are still transient, and considerably before the spring pupping season;

(5) The sounds from energy produced by vibrators used during on-ice seismic programs typically are at frequencies well below those used by ringed seals to communicate (1000 Hz). Thus, ringed seal hearing is not likely to be very good at those frequencies and seismic sounds are not likely to have strong masking effects on ringed seal calls. This effect is further moderated by the quiet intervals between seismic energy transmissions.

(6) There has been no major displacement of seals away from on-ice seismic operations (Frost and Lowry, 1988). Further confirmation of this lack of major response to industrial activity is illustrated by the fact that there has been no major displacement of seals near the Northstar Project. Studies at Northstar have shown a continued presence of ringed seals throughout winter and creation of new seal structures (Williams *et al.*, 2001).

(7) Although seals may abandon structures near seismic activity, studies have not demonstrated a cause and effect relationship between abandonment and seismic activity or biologically significant impact on ringed seals. Studies by Williams *et al.* (2001), Kelley *et al.* (1986, 1988) and Kelly and Quakenbush (1990) have shown that abandonment of holes and lairs and establishment or re-occupancy of new ones is an ongoing natural occurrence, with or without human presence. Link *et al.* (1999) compared ringed seal densities between areas with and without vibroseis activity and found densities were highly variable within each area and inconsistent between areas (densities were lower for 5 days, equal for 1 day, and higher for 1 day in vibroseis area), suggesting other factors beyond the seismic activity likely influenced seal use patterns. Consequently, a wide variety of natural factors influence this patterns of seal use including time of day, weather, season, ice deformation, ice thickness, accumulation of snow, food availability and predators as well as ring seal behavior and populations dynamics.

In winter, bearded seals are restricted to cracks, broken ice, and other openings in the ice. On-ice seismic operations avoid those areas for safety reasons. Therefore, any exposure of bearded seals to on-ice seismic operations would be limited to distant and transient exposure. Bearded seals exposed to a distant on-ice seismic operation might dive into the water. Consequently, no significant effects on individual bearded seals or their population are expected, and the number of individuals that might be temporarily disturbed would be very low.

As a result, CPA believes the effects of on-ice seismic are expected to be limited to short-term and localized behavioral changes involving relatively small numbers of seals. As NMFS came to a similar finding in the EA prepared in 1998 for on-ice seismic activity in the Beaufort Sea, NMFS has determined that these changes in behavior are expected to be negligible (NMFS, 1998). Therefore, the potential effects of the proposed on-ice seismic operations during 2003 are unlikely to result in more than small numbers of seals being affected, will have no more than a negligible impact on ringed and bearded seal stocks and will not have an unmitigable adverse impact on subsistence uses of these two species.

**Authorization**

For the reasons described previously in this document, NMFS has issued an IHA to CPA for a 5–month period, provided the mitigation, monitoring, and reporting requirements described in this document and the IHA are undertaken.

Dated: March 19, 2003.

**Laurie K. Allen,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–7069 Filed 3–24–03; 8:45 am]

**BILLING CODE 3510–22–S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

March 19, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** March 25, 2003.

**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 Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68569, published on November 12, 2002.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

March 19, 2003.

Commissioner,

*Bureau of Customs and Border Protection, Washington, DC 20229*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on March 25, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 338/339 | 5,077,832 dozen. |
| 340/640 | 2,774,622 dozen. |
| 341 | 5,712,802 dozen of which not more than 3,463,684 dozen shall be in Category 341–Y [2]. |
| 347/348 | 992,420 dozen. |
| 351/651 | 402,569 dozen. |
| 363 | 72,105,608 numbers. |
| Group II | |
| 200, 201, 220, 224–227, 237, 239pt. [3], 300, 301, 331pt. [4], 332, 333, 352, 359pt. [5], 360–362, 603, 604, 611–620, 624–629, 631pt. [6], 633, 638, 639, 643–646, 652, 659pt. [7], 666pt. [8], 845, 846 and 852, as a group | 152,929,380 square meters equivalent. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[4] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[5] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[6] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[7] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[8] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–6976 Filed 3–24–03 8:45 am]

**BILLING CODE 3510–DR–S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Increase of a Designated Consultation Level for Certain Wool Textile Products Produced or Manufactured in Mexico

March 19, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection increasing a designated consultation level.

**EFFECTIVE DATE:** March 25, 2003.

**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 this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The unused portion of the 2002 special increase in Category 433 is being recredited to the 2003 limit.

The level does not apply to NAFTA (North American Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the agreement. In addition, this consultation level does not apply to textile and apparel goods, assembled in Mexico, in

which all fabric components were wholly formed and cut in the United States, entered under the United States Harmonized Tariff Schedule heading 9802.00.90.

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 68 FR 1599, published on January 13, 2003). Also see 67 FR 57408, published on September 10, 2002.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**The Committee for the Implementation of Textile Agreements**

March 19, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 3, 2002 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the period which began on January 1, 2003 and extends through December 31, 2003. The levels established in that directive do not apply to NAFTA (North American Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of NAFTA or to textile and apparel goods, assembled in Mexico, in which all fabric components were wholly formed and cut in the United States, entered under the United States Harmonized Tariff Schedule heading 9802.00.90.

Effective on March 25, 2003, you are directed to increase the current designated consultation level for Category 433 to 10,794 dozen [1], pursuant to the provisions of the NAFTA.

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,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–6977 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2002.

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

March 19, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** March 26, 2003.

**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 Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryover.

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 68 FR 1599, published on January 13, 2003). Also see 67 FR 68572, published on November 12, 2002.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

March 19, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, 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 Oman and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003.

Effective on March 26, 2003, you are directed to increase the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 334/634 | 201,544 dozen. |
| 335/635 | 407,676 dozen. |
| 338/339 | 845,930 dozen. |
| 340/640 | 407,676 dozen. |
| 341/641 | 305,756 dozen. |
| 647/648 | 576,362 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–6978 Filed 3–24–03; 8:45 am]

BILLING CODE 3510– DR–S

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

March 19, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** March 25, 2003.

**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 Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854);

Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used, swing, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 57411, published on September 10, 2002.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

March 19, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 3, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Turkey and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on March 25, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted limit [1] |
|---|---|
| Fabric Group | |
| 219, 313–O [2], 314–O [3], 315–O [4], 317–O [5], 326–O [6], 617, 625/626/627/628/629, as a group | 262,848,802 square meters of which not more than 63,646,891 square meters shall be in Category 219; not more than 77,790,644 square meters shall be in Category 313–O; not more than 45,260,011 square meters shall be in Category 314–O; not more than 60,818,144 square meters shall be in Category 315–O; not more than 63,646,891 square meters shall be in Category 317–O; not more than 7,071,875 square meters shall be in Category 326–O, and not more than 42,431,264 square meters shall be in Category 617; Sublevel in Fabric Group 625/626/627/628/629: 28,651,713 square meters of which not more than 11,460,683 square meters shall be in Category 625; not more than 11,460,683 square meters shall be in Category 626; not more than 11,460,683 square meters shall be in Category 627; not more than 11,460,683 square meters shall be in Category 628; and not more than 11,460,683 square meters shall be in Category 629.. |
| Limits not in a group | |
| 338/339/638/639 | 9,356,676 dozen of which not more than 8,421,009 dozen shall be in Categories 338–S/339–S/638–S/639–S [7]. |
| 347/348 | 8,054,420 dozen of which not more than 3,014,519 dozen shall be in Categories 347–T/348–T [8]. |
| 351/651 | 1,444,386 dozen. |
| 361 | 3,037,261 numbers. |
| 448 | 44,822 dozen. |
| 604 | 3,630,786 kilograms. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.
[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.
[3] Category 314–O: all HTS numbers except 5209.51.6015.
[4] Category 315–O: all HTS numbers except 5208.52.4055.
[5] Category 317–O: all HTS numbers except 5208.59.2085.
[6] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.
[7] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.
[8] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–6979 Filed 3–24–03; 8:45 am]

**BILLING CODE 3510–DR–S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the United Arab Emirates

March 19, 2003.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

**EFFECTIVE DATE:** March 25, 2003.

**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 Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://www.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 carryforward used and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63899, published on October 16, 2002.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

March 19, 2003.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 9, 2002, 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 the United Arab Emirates and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on March 25, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted limit [1] |
|---|---|
| 338/339 | 1,037,432 dozen of which not more than 654,601 dozen shall be in Categories 338–S/339–S [2]. |
| 347/348 | 770,664 dozen of which not more than 387,826 dozen shall be in Categories 347–T/348–T [3]. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 03–6980 Filed 3–24–03; 8:45 am]

BILLING CODE 3510–DR–S

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Notice of Availability of Funds for Challenge Grants

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of funding availability.

**SUMMARY:** The Corporation for National and Community Service (hereinafter ''the Corporation'') announces the availability of approximately $6,000,000 in fiscal year 2003 funds for eligible nonprofit organizations for challenge grants. The purpose of these challenge grants is to assist nonprofit organizations in securing previously untapped sources of private funds to build sustainable service and volunteer programs. Organizations receiving funds under this notice must either greatly expand services by engaging citizens in meeting community needs or offer new services through expanded citizen engagement. The funds are available for these challenge grants under authority provided of Public Law 108–7, the Omnibus Appropriations Act for Fiscal Year 2003. The Corporation anticipates making between 2 and 12 challenge grants under this announcement, with the minimum grant level of $500,000 and the maximum grant level of $3,000,000. Applicants must provide at least two dollars in private funding for every Federal dollar. Matching funds must be cash. The Corporation will make awards covering a period not to exceed one year. Eligible nonprofit organizations, including those that have not applied for federal assistance from the Corporation in the past, as well as interested faith-based and community-based organizations, are encouraged to apply. The Corporation requires applicants to apply through its eGrant electronic system.

**DATES:** The deadline for applications is 11:59 p.m. Eastern Daylight Time on April 10, 2003. However, if for some legitimate reason it is necessary for you to submit a paper application, we must receive it by 5 p.m. on April 10, 2003. We anticipate announcing selections under this Notice no later than June 9, 2003.

**ADDRESSES:** You may access eGrants, the integrated, secure, Web-based system that we require for applications, through our Web site at *http://www.cns.gov/egrants/index.html*. If you cannot submit an application electronically, then you must obtain the Corporation's approval to submit a paper application. Submit paper application to the following address: Corporation for National and Community Service, 1201 New York Avenue NW., Box C.G., Washington, DC 20525. Due to delays in delivery of regular mail to government offices, there is no guarantee that a paper application sent by regular mail will arrive in time to be considered. We therefore suggest that, if submitting a paper application, you use U.S.P.S. priority mail or a commercial overnight delivery service to make sure that you meet the deadline. We will not accept an application that is submitted via facsimile.

**FOR FURTHER INFORMATION CONTACT:** Thea Kachoris at (312) 353–5056 (*tkachoris@cns.gov*). This Notice, with the complete program application guidelines included, is available on the Corporation's Web site, at: *http://www.cns.gov/whatshot/notices.html*. For a printed copy of any of these materials, please contact Thea Kachoris at (312) 353–5056 (*tkachoris@cns.gov*). The TDD number is 202–565–2799. Upon request, this information will be made available in alternate formats for people with disabilities.

Dated: March 19, 2003.

**Marlene Zakai,**

*Manager, Challenge Grants.*

[FR Doc. 03–6968 Filed 3–24–03; 8:45 am]

BILLING CODE 6050–$$–P

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Notice of Availability of Surplus Land and Buildings in Accordance With Public Law 103–421 Located at Fort Ritchie Military Reservation, Cascade, MD

**AGENCY:** Corps of Engineers, DoD.

**ACTION:** Public notice of availability.

**SUMMARY:** This notice identifies the surplus real property located at the Fort Ritchie Military Reservation, Cascade, MD. The property is located in Washington County, Northeast of Hagerstown in the community of Cascade, MD at the intersection of routes 550 and 491.

**SUPPLEMENTARY INFORMATION:** This surplus is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notices of interest should be forwarded to Mr. Richard Rook, Executive Director, PenMar Development Corporation, P.O. Box 699, Cascade, MD 21719, telephone (301) 241–4050, fax (301) 241–4141. A copy of Notices of Interest should be sent to Mr. Gerry Bresee at the address below.

For more information regarding the particular property identified in this Notice (*i.e.*, acreage, floor plans, existing sanitary facilities, exact location), contact Mr. Gerry Bresee, Real Estate Division, Army Corps of Engineers, P.O. Box 1715, Baltimore, MD 21203 (telephone 410–962–5173, fax 410–962–0866).

Parties qualifying for Public Benefit Conveyances are invited to contact the following offices to find out more about each agency's Public Benefit Conveyance Program and to discuss with the Agency the Party's potential for qualifying for a conveyance of property:

**For Park and Recreation Uses**

Mr. Bill Huie, Recreation Grants Division, Southeast Regional Office, National Park Service, 100 Alabama Street, SW., Atlanta Georgia, GA 30303, 404–562–3175.

**For Educational Uses**

Mr. Peter Wieczorek, Director, Eastern Zone, Federal Real Property Assistance Program, U.S. Department of Education, J.W. McCormack PO & Courthouse, Room 536, Boston, MA 02109, 617–223–9321.

**For Health Conveyances**

Chief, Real Property Branch, Division of Health Facilities Planning, Room 5B17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301–443–2265.

**For Prison Uses**

Chief, Site Selection and Environmental Review, Bureau of Prisons, 320 First Street, NW, Washington, DC 20534, 202–514–6470.

The surplus real property totals approximately 591 acres and contains 252 buildings totaling 1,384,000 square feet of space. Current range of uses include administrative, residential, open recreation and special purpose space. Future uses may include generally the same types of uses.

**James S. Turkel,**

*Chief Real Estate Division, Corps of Engineers, United States of America.*

[FR Doc. 03–7001 Filed 3–24–03; 8:45 am]

BILLING CODE 3710–92–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Grant Exclusive Patent License; Radiant Images Incorporated

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy hereby gives notice of it's intent to grant to Radiant Images Incorporated, a revocable, nonassignable, exclusive license in the United States to practice the Government-owned invention described in U.S. Patent No. 6,521,950 entitled ''Ultra-high Resolution Liquid Crystal Display on Silicon-On-Sapphire.''

**DATES:** Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

**ADDRESSES:** Written objections are to be filed with the Office of Patent Counsel, Space and Naval Warfare Systems Center, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765.

**FOR FURTHER INFORMATION CONTACT:** Mr. James A. Ward, Space and Naval Warfare Systems Center, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765, telephone (619) 553–3823.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.7(a))

Dated: March 12, 2003.

**J.T. Baltimore,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.*

[FR Doc. 03–7064 Filed 3–24–03; 8:45 am]

BILLING CODE 3810–FF–M

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

### Schultz-Hanford Area Transmission Line Project

**AGENCY:** Bonneville Power Administration (BPA), Department of Energy (DOE).

**ACTION:** Notice of availability of Record of Decision (ROD).

**SUMMARY:** This notice announces the availability of the ROD to construct the proposed Schultz-Hanford Area Transmission Line Project in Douglas, Grant, Lincoln, and Spokane Counties, Washington, based on the Final Environmental Impact Statement for this project (DOE/EIS–0325, January 2003). The proposed action consists of constructing a new 500-kilovolt (kV) transmission line between the Schultz Substation north of Ellensburg, Washington, and a new substation, Wautoma Substation, 2 miles south of Highway 24 in Benton County, Washington, a distance of about 64 miles.

**ADDRESSES:** Copies of the ROD and EIS may be obtained by calling BPA toll-free at 1–888–276–7790. The ROD and EIS Summary are also available on the Transmission Business Line Web site at *http://www.transmission.bpa.gov/projects.*

**FOR FURTHER INFORMATION CONTACT:** Nancy A. Wittpenn, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *nawittpenn@bpa.gov.*

**SUPPLEMENTARY INFORMATION:** BPA has decided to implement the Agency Preferred Alternative identified in the Schultz-Hanford Area Transmission Line Project Final EIS, with the exception of Option 1 of the Sickler-

Schultz Reroute. Due to landowner concerns, BPA will now implement Option 2 of the Sickler-Schultz Reroute. The Agency Preferred Alternative will primarily use 500-kV single-circuit steel lattice structures. Through an agricultural area near Mattawa, for approximately 9 miles, 500-kV double-circuit lattice structures will be used to hold the new 500-kV line and the existing Midway-Vantage 230-kV line. New right-of-way of 150 to 180 feet will be needed for the new line. As part of the Agency Preferred Alternative, BPA has decided to construct new and upgrade existing access roads; construct a new bay within the existing fenced yard of the Schultz Substation; re-route the existing Sickler-Schultz 500-kV transmission line; construct a new substation called Wautoma Substation, in Benton County; loop the existing Hanford-Ostrander 500-kV and Hanford-John Day 500-kV transmission lines through the Wautoma Substation; and install fiber optic cable between the Vantage Substation and the new Wautoma Substation, and the Vantage Substation and the Columbia Substation. All mitigation measures have been adopted and included with the ROD. A Mitigation Action Plan will be prepared to be included in the construction specifications to ensure mitigation measures are implemented.

Issued in Portland, Oregon, on March 17, 2003.

**Stephen J. Wright,**

*Administrator and Chief Executive Officer.*

[FR Doc. 03–7025 Filed 3–24–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Energy Information Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Energy Information Administration (EIA), Department of Energy (DOE).

**ACTION:** Agency information collection activities: proposed collection; comment request.

**SUMMARY:** The EIA is soliciting comments on the proposed three-year extension to the petroleum survey forms listed below:

EIA–14, ''Refiners'' Monthly Cost Report'';
EIA–182, ''Domestic Crude Oil First Purchase Report'';
EIA–782A, ''Refiners'/Gas Plant Operators'' Monthly Petroleum Product Sales Report'';
EIA–782B, ''Resellers'/Retailers'' Monthly Petroleum Product Sales Report'';
EIA–782C, ''Monthly Report of Petroleum Products Sold Into States for Consumption'';
EIA–821, ''Annual Fuel Oil and Kerosene Sales Report'';
EIA–856, ''Monthly Foreign Crude Oil Acquisition Report'';
EIA–863, ''Petroleum Product Sales Identification Survey'';
EIA–877, ''Winter Heating Fuels Telephone Survey'';
EIA–878, ''Motor Gasoline Price Survey'';
EIA–888, ''On-Highway Diesel Fuel Price Survey.''

**DATES:** Comments must be filed by May 27, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

**ADDRESSES:** Send comments to Jacob Bournazian, EI–42, Energy Information Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585–0650. To ensure receipt of the comments by the due date, submission by FAX (202) 586–4913 or e-mail (*jacob.bournazian@eia.doe.gov*) is recommended. The mailing address is Petroleum Division, EI–42, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Jacob Bournazian may be contacted by telephone at (202) 586–1256.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of any forms and instructions should be directed to Jacob Bournazian at the address listed above.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Current Actions
III. Request for Comments

### I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The petroleum marketing survey forms collect volumetric and price information needed for determining the supply of and demand for crude oil and refined petroleum products. These surveys provide a basic set of data pertaining to the structure, efficiency, and behavior of petroleum markets. These data are published by the EIA on its Web site, *http://www.eia.doe.gov,* as well as in publications such as the *Monthly Energy Review, Annual Energy Review, Petroleum Marketing Monthly, Petroleum Marketing Annual, Weekly Petroleum Status Report,* and the *International Energy Outlook.* EIA also maintains a 24-hour telephone hotline number, (202) 586–6966, for the public to obtain retail price estimates for on-highway diesel fuel and motor gasoline.

### II. Current Actions

EIA will be requesting a three-year extension of approval to its petroleum marketing surveys with the following survey changes. The Form EIA–14 currently collects, at the national level, the weighted cost of crude oil as it is booked into the refinery. EIA proposes to collect this same price data at the Petroleum Administration for Defense District (PADD) level for more accurate measurement of refiner costs at the regional level.

Form EIA–182 collects data on the weighted average wellhead prices paid by the first purchasers to the crude oil producers. EIA proposes to consolidate low volume crude streams and begin publishing new crude streams which are supported by data. The smaller volume crude streams that EIA proposes to delete are not publishable at the state level. Proposed changes to the following states and areas are described below:

*California:* Delete the data collection elements for Huntington Beach, San Ardo, and Ventura crude streams and begin collection of the following new crude streams: Coalinga, Cymric, and Lost Hills.

*California Outer Continental Shelf:* Begin data collection on the Pescado crude stream.

*Gulf Coast:* Delete the data collection elements for Texas Gulf Refugio and Louisiana South Mix crude streams and begin collection on the following six (6) new streams: Louisiana Light Sweet, Heavy Louisiana Sweet, Mars Blend, Eugene Island, HOOPS blend, and High Island.

*Oklahoma:* Delete the data collection elements for Oklahoma Cement and Oklahoma Garber and begin collection of the Oklahoma Sweet crude stream.

*Texas:* Delete the data collection elements for Texas Hawkins crude stream and begin collection of the following four (4) crude streams: Panhandle, North Texas Sweet, and South Texas Sweet, and West Central Texas.

Form EIA–782C collects data on the sales of various refined petroleum products into states where the product is ultimately used. EIA proposes to delete naphtha-type jet fuel as a data element to Form EIA–782C based on the declining sales for this product over the past 10 years.

**III. Request for Comments**

Prospective respondents and other interested parties should comment on the actions discussed in item II. Please indicate to which form(s) your comments apply. Your comments should address your use of data and how the proposed changes impact your data needs.

*General Issues*

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

*As a Potential Respondent to the Request for Information*

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average:

EIA–14, ''Refiners'' Monthly Cost Report'' (1.6 hours per response);

EIA–182, ''Domestic Crude Oil First Purchase Report'' (4.3 hours per response);

EIA–782A, ''Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report'' (15 hours per response);

EIA–782B, ''Resellers'/Retailers' Monthly Petroleum Product Sales Report'' (2.5 hours per response);

EIA–782C, ''Monthly Report of Petroleum Products Sold Into States for Consumption'' (2.1 hours per response);

EIA–821, ''Annual Fuel Oil and Kerosene Sales Report'' (3.2 hours per response);

EIA–856, ''Monthly Foreign Crude Oil Acquisition Report'' (6.1 hours per response);

EIA–863, ''Petroleum Product Sales Identification survey'' (1 hour per response);

EIA–877, ''Winter Heating Fuels Telephone Survey'' (.1 hour per response);

EIA–878, ''Motor Gasoline Price Survey'' (.05 hours per response);

EIA–888, ''On-Highway Diesel Fuel Price Survey'' (.05 hours per response).

The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

*As a Potential User of the Information to be Collected*

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

**Statutory Authority:** Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

Issued in Washington, DC, March 19, 2003.

**Jay H. Casselberry,**

*Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 03–7026 Filed 3–24–03; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–533–006]**

### Algonquin Gas Transmission Company; Notice of Compliance Filing

March 18, 2003.

Take notice that on March 14, 2003, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the revised tariff sheets listed in appendix A of the filing, effective March 4, 2003.

Algonquin states that the purpose of this filing is to comply with the Order on Compliance Filing issued by the Commission in Docket Nos. RP00–533–004 and RP03–193–000 on March 4, 2003 (''March 4 Order'') [102 FERC ¶ 61,264 (2003)].

Algonquin states that copies of its filing have been mailed to all affected customers of Algonquin and interested state commissions, as well as to all parties listed on the Official Service List compiled by the Secretary of the Commission in Docket No. RP00–533.

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.

*Protest Date:* March 26, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–7041 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP00–335–003 and RP03–167–001]**

### Black Marlin Pipeline Company; Notice of Compliance Filing

March 18, 2003.

Take notice that on March 13, 2003, Black Marlin Pipeline Company (Black Marlin) tendered for filing in its FERC Gas Tariff, First Revised Volume No. 1, the following tariffs sheets in compliance with the Commission's letter order issued February 27, 2003:

Second Revised Sheet No. 109.
First Revised Sheet No. 110.
Third Revised Sheet No. 111.
First Revised Sheet No. 133.
Second Revised Sheet No. 134.
Third Revised Sheet No. 135.
Fifth Revised Sheet No. 200.
Fifth Revised Sheet No. 212.
Sixth Revised Sheet No. 213.
Second Revised Sheet No. 213.01.
Original Revised Sheet No. 225.
Original Revised Sheet No. 226.
Original Revised Sheet No. 227.
Original Revised Sheet No. 228.
Reserved Sheet Nos. 229–299.

Black Marlin 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 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.

*Protest Date:* March 25, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–7040 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–302–000]**

### Colorado Interstate Gas Company; Notice of Tariff Filing

March 18, 2003.

Take notice that on March 14, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective April 15, 2003:

Thirteenth Revised Sheet No. 239.
First Revised Sheet No. 322A.
Third Revised Sheet No. 323.
Original Sheet No. 323A.
Third Revised Sheet No. 324.
Fourth Revised Sheet No. 325.
First Revised Sheet No. 325A.

CIG states that these tariff sheets revise the system-wide gas quality specifications to make them more flexible and to state certain area specific qualifications.

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 385.314 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. 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.

*Comment Date:* March 26, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–7045 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–190–023]**

### Colorado Interstate Gas Company; Notice of Negotiated Rates

March 18, 2003.

Take notice that on March 14, 2003, Colorado Interstate Gas Company (CIG) tendered for filing the following tariff sheets to its FERC Gas Tariff and a revised Firm Transportation Service Agreement (FTSA).

First Revised Volume No. 1.
First Revised Sheet No. 11C.
First Revised Sheet No. 11J.
First Revised Sheet No. 11K.
First Revised Sheet No. 11L.

CIG states that the tendered tariff sheets and FTSA are submitted to update or remove certain previously filed negotiated rate transactions. The tariff sheets and the FTSA are proposed to become effective on March 15, 2003.

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 385.314 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. 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.

*Comment Date:* March 26, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–7046 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. MG03–2–000]**

### Discovery Gas Transmission, LLC; Notice of Filing

March 17, 2003.

Take notice that on February 28, 2003, Discovery Gas Transmission, LLC filed standards of conduct under part 161 of the Commission's regulations, 18 CFR part 161.

Discovery Gas Transmission, LLC states that it served copies of the filing on all customers and interested state commissions.

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 filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (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.

*Comment Date:* April 1, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–7039 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–301–000]**

### Eastern Shore Natural Gas Company; Notice of Tariff Filing

March 18, 2003.

Take notice that on March 12, 2003, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Forty-Fifth Revised Sheet No. 7 and Forty-Fifth Revised Sheet No. 8, effective April 1, 2003.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate Schedules GSS and LSS. The costs of the above referenced storage services comprises the rates and charges payable under ESNG's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS and LSS.

ESNG states that copies of the filing have been served upon its 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 385.314 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. 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.

*Comment Date:* March 24, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–7044 Filed 3–24–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP03–5–001]**

### National Fuel Gas Supply Corporation; Notice of Compliance Filing

March 18, 2003.

Take notice that on March 13, 2003, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Third Revised Sheet No. 46 and Second Revised Sheet No. 55, with a proposed effective date of April 12, 2003.

National Fuel states that the filing is made to modify its Operating Protocol for EFT service to reflect the impact of the abandonment of Line C in Docket No. CP03–5–000, which occurred on March 1, 2003.

National Fuel states that copies of this filing were served upon its customers, interested state commissions and the parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 25, 2003. 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. 03–7037 Filed 3–24–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP03–38–002]**

### Northern Natural Gas Company; Notice of Compliance Filing

March 18, 2003.

Take notice that on March 13, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet proposed to be effective on February 26, 2003:

Fifth Revised Volume No. 1.
9 Revised Sheet No. 4.
Original Volume No. 2.
33 Revised Sheet No. 1A.
First Revised Sheet No. 1407.

Northern states that the above referenced sheets represent cancellation of Rate Schedule X–82 from Northern's Original Volume No. 2 FERC Gas Tariff, and the associated deletions from the Table of Contents in Northern's Volume Nos. 1 and 2 tariffs.

Northern states that copies of the filing were served upon the company's customers and interested 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 March 25, 2003. 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. 03–7036 Filed 3–24–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–229–001]**

### Tennessee Gas Pipeline Company; Notice of Compliance Tariff Filing

March 18, 2003.

Take notice that on March 12, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Compliance Tariff Filing in the above-referenced docket.

Tennessee states that its filing revises the requirement for the posting of a notice of tap or connecting facilities subsidies on Tennessee's PASSKEY system. The submitted tariff provision would require posting of such a notice for thirty days after Tennessee enters into any such subsidy agreement. Tennessee requests that the Commission grant approval of the submitted tariff revision effective March 1, 2003.

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.

*Protest Date:* March 24, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–7043 Filed 3–24–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–535–006]**

### Texas Eastern Transmission, LP; Notice of Compliance Filing

March 18, 2003.

Take notice that on March 14, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets listed in Appendix A of the filing, effective March 4, 2003.

Texas Eastern states that the purpose of this filing is to comply with the Order on Compliance Filing issued by the Commission in Docket Nos. RP00–535–004 and RP03–194–000 on March 4, 2003 (March 4 Order) [102 FERC ¶ 61,262 (2003)].

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 listed on the Official Service List compiled by the Secretary of the Commission in Docket No. RP00–535.

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.

*Protest Date:* March 26, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–7042 Filed 3–24–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER03–513–004, et al.]**

## Sithe Edgar LLC, et al.; Electric Rate and Corporate Filings

March 18, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. Sithe Edgar LLC., Sithe Framingham LLC., Sithe Mystic LLC., Sithe New Boston LLC., Sithe West Medway LLC., Sithe Wyman LLC., AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., and Sterling Power Partners, L.P.

[Docket No. ER01–513–004]

Take notice that on March 12, 2003, Sithe Edgar LLC, Sithe Framingham LLC, Sithe Mystic LLC, Sithe New Boston LLC, Sithe West Medway LLC, Sithe Wyman LLC, AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P., (the Project Companies) submitted revised tariff sheets to conform the rate schedule designations with the requirements of Order No. 614, and to reflect the changes in ownership and the changes in names of certain of these entities.

*Comment Date:* April 2, 2003.

### 2. Virginia Electric and Power Company

[Docket No. ER03–383–002]

Take notice that on March 14, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a First Substitute First Revised Generator Interconnection and Operating Agreement (Revised Interconnection Agreement) with Old Dominion Electric Cooperative (ODEC) revising certain provisions.

Dominion Virginia Power respectfully requests that the Commission allow the Revised Interconnection Agreement to become effective February 1, 2003, as previously requested.

Virginia Electric and Power Company states that copies of the filing were served upon ODEC and the Virginia State Corporation Commission.

*Comment Date:* April 4, 2003.

### 3. Oklahoma Gas & Electric Company

[Docket No. ER03–480–001]

Take notice that on March 14, 2003, Oklahoma Gas & Electric Company (OGE), submitted for filing, cost support for the charges outlined in the Delivery Point and Transmission Interconnection Agreement (Agreement) between OGE and the City of Paris, Arkansas filed on January 31, 2003. In addition, OGE provided further background regarding the Agreement.

*Comment Date:* April 4, 2003]

### 4. Virginia Electric and Power Company

[Docket No. ER03–554–001]

Take notice that on March 14, 2003, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing a Substitute Generator Interconnection and Operating Agreement between Dominion Virginia Power and Industrial Power Generating Corporation (Ingenco) revising certain provisions.

Dominion Virginia Power requests that the Commission waive its notice of filing requirements and accept this filing to make the Interconnection Agreement effective on February 25, 2003, as previously requested.

Dominion Virginia Power states that copies of the filing were served upon Ingenco and the Virginia State Corporation Commission.

*Comment Date:* April 4, 2003.

### 5. Wisconsin Public Service Corporation

[Docket No. ER03–612–000]

Take notice that on March 12, 2003, Wisconsin Public Service Corporation (WPSC) tendered for filing Third Revised Service Agreement No. 11 (Revised Service Agreement) between WPSC and Upper Peninsula Power Company (UPPCo) under WPSC's FERC Electric Tariff, Third Revised Volume No. 1.

WPSC requests that the Commission allow the Service Agreement to become effective as of May 12, 2003, which is 60 days after filing.

WPSC states that a copy of the filing was served upon UPPCo , the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

*Comment Date:* April 2, 2003.

### 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 filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (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. 03–7038 Filed 3–24–03; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Southeastern Power Administration

## Proposed Rate Adjustment, Public Forum, and Opportunities for Public Review and Comment for Cumberland System of Projects

**AGENCY:** Southeastern Power Administration, DOE.

**ACTION:** Notice of proposed rates.

**SUMMARY:** Southeastern Power Administration (Southeastern) proposes to replace Rate Schedules SJ–1–A, CBR–1–D, CSI–1–D, CK–1–D, CC–1–E, CM–1–D, CEK–1–D, and CTV–1–D applicable to the sale of power from the Cumberland System of Projects and seeks approval of Rate Schedules SJ–1–B, CBR–1–E, CSI–1–E, CK–1–E, CC–1–F, CM–1–E, CEK–1–E, and CTV–1–E. The new rate schedules are to be effective for a 5-year period, October 1, 2003, through September 30, 2008. Additionally, opportunities will be available for interested persons to review the present rates, the proposed rates and supporting studies, to participate in a forum and to submit written comments. Southeastern will evaluate all comments received in this process.

**DATES:** Written comments are due on or before June 23, 2003. A public information and comment forum will be held in Nashville, Tennessee on May 1, 2003, at 10 a.m. Persons desiring to speak at a forum should notify Southeastern at least three days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits.

**ADDRESSES:** Written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia, 30635–6711. The public information and comment forum will be held at the Doubletree Hotel, 315 Fourth Avenue, North, Nashville, TN, (615) 244–8200.

**FOR FURTHER INFORMATION CONTACT:** Leon Jourolmon, Assistant Administrator, Finance and Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia, 30635–6711, (706) 213–3800.

**SUPPLEMENTARY INFORMATION:** The Federal Energy Regulatory Commission (FERC) by order issued March 17, 2000, in Docket No. EF99–3021–000, confirmed and approved Wholesale Power Rate Schedules SJ–1–A, CBR–1–D, CSI–1–D, CK–1–D, CC–1–E, CM–1–D, CEK–1–D, and CTV–1–D applicable to Cumberland System power for a period ending June 30, 2004. On May 12, 2000, FERC issued an order granting rehearing for further consideration. On June 15, 2000, FERC issued an order denying rehearing.

*Discussion:* Existing rate schedules are predicated upon a May 1999 repayment study and other supporting data contained in FERC Docket No. EF99–3021–000. The current repayment study, dated March 2003, shows that existing rates are not adequate to recover all costs required by present repayment criteria.

A revised repayment study with a revenue increase of $8,063,000 over the current repayment study demonstrates that rates would be adequate to meet repayment criteria. The additional revenue requirement amounts to a 20 per cent increase in revenues. Existing rates have been in effect since July 1, 1999. The Cumberland System region has incurred a severe drought since that time. This has impacted repayment in two ways. First, revenues have been reduced because Southeastern has had less energy available for sale. Second, expenses have increased because it has been necessary for Southeastern to purchase replacement energy to meet its minimum energy obligations.

The Corps of Engineers has provided Southeastern with a plan of capital expenditures necessary to rehabilitate the projects in the Cumberland System. These costs are included in the proposed rates. It is proposed that the revised rate schedules contain the following unit rates:

CUMBERLAND SYSTEM RATES

| | |
|---|---|
| TVA Rate Schedule: | |
| Capacity | $2.04 per kw/month. |
| Additional Energy | 9.313 mills per kwh. |
| Outside Preference Customers Rate Schedule (Excluding Customers served through Carolina Power & Light Company): | |
| Capacity | $3.506 per kw/month. |
| Additional Energy | 9.313 mills per kwh. |
| Customers Served through Carolina Power & Light Company, Western Division | |
| Capacity | $3.991 per kw/month. |
| Transmission | $1.2493 per kw/month. |
| Monongahela Power Company: | |
| Energy | The lower of 39.2 mills or Monongahela Power Company's avoided cost. |

The referenced repayment studies are available for examination at 1166 Athens Tech Road, Elberton, Georgia 30635–6711. Proposed Rate Schedules SJ–1–B, CBR–1–E, CSI–1–E, CK–1–E, CC–1–F, CM–1–E, CEK–1–E, and CTV–1–E are also available.

Dated: March 6, 2003.

**Charles A. Borchardt,**

*Administrator.*

[FR Doc. 03–7027 Filed 3–24–03; 8:45 am]

BILLING CODE 6450–01–P

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11 a.m., Monday, March 31, 2003.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**FOR FURTHER INFORMATION CONTACT:** Michelle A. Smith, Assistant to the Board; 202–452–2955.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 21, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–7283 Filed 3–21–03; 3:20 pm]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Opportunity for Cosponsorship of the President's Challenge Physical Activity and Fitness Awards Program

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of the President's Council on Physical Fitness and Sports.

**ACTION:** Notice.

**SUMMARY:** The Office of the President's Council on Physical Fitness and Sports

(PCPFS) announces the opportunity for both non-Federal public and private sector entities to cosponsor activities related to the President's Challenge Physical Activity and Fitness Awards Program. Potential cosponsors must have a demonstrated interest in physical activity/fitness and/or sports and be willing to participate substantively in the cosponsored activity.

**DATES:** To receive consideration, a request to participate as a cosponsor must be received by the close of business on April 7, 2003, at the address listed. Requests will meet the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date. Private metered postmarks will not be acceptable as proof of timely mailing. Hand-delivered requests must be received by 5 p.m. Requests that are received after the deadline date will be returned to the sender.

**ADDRESSES:** Notifications of interest in a cosponsorship should be sent to Christine Spain, Director of Research, Planning and Special Projects, Office of the President's Council on Physical Fitness and Sports, Hubert H. Humphrey Building, Room 738-H, 200 Independence Avenue, SW., Washington, DC 20201; Ph: (202) 690–5148, Fax: (202) 690–5211. Notifications may also be submitted by electronic mail to *cspain@osophs.dhhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Christine Spain, Director of Research, Planning and Special Projects, Office of the President's Council on Physical Fitness and Sports, Hubert H. Humphrey Building, Room 738-H, 200 Independence Avenue, SW., Washington, DC 20201; Ph: (202) 690–5148, Fax: (202) 690–5211, Email: *cspain@osophs.dhhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

The PCPFS was established by the President of the United States and operates under Executive Order No. 13265. The Secretary, through the Office of the PCPFS, receives recommendations from the Council and is developing and coordinating a national program to enhance physical activity and sports programs. Section (1)(b) of the Executive Order (EO) provides that the Office of the PCPFS will ''enhance coordination of programs within and among the private and public sectors that promote the participation in, and safe and easy access to, physical activity/fitness and sports.'' In addition, the Office of the PCPFS is directed by section (1)(c) of the EO to ''expand availability of quality information and guidance regarding physical activity and sports participation.'' Through the authority of section 1704 of the Public Health Service Act, the Office of PCPFS may support and ''encourage others to support'' activities related to health information and promotion, including the publication of information and securing the cooperation of communication media.

The purpose of the President's Challenge Physical Activity and Fitness Awards Program (the Program) is to motivate individuals six years and older to begin and continue an active lifestyle leading to enhanced physical fitness. It has reached over 70 million children and youth since its inception in 1966. The Program now focuses on three distinct program areas: physical fitness, health fitness and active lifestyle. Adults can now participate with their children or log activities by themselves to earn the Presidential Active Lifestyle Award (PALA) and the Presidential Adult Active Lifestyle Award (PAAL). Program materials are available in both English and Spanish.

## Requirements of Cosponsorship

The Office of the PCPFS is seeking a cosponsor(s) to partner in ways that accord with its particular circumstances. For example, an entity might offer to cosponsor the following proposed Program activities with the Office of PCPFS:

- A nationwide advertising campaign or public service announcement (print, TV, or radio) that would alert all individuals, including diverse media markets, to the dangers of a sedentary lifestyle and the benefits of the Program;
- A nationwide sequence of activities that would celebrate National Physical Fitness and Sports Month (including sensitivity to diverse cultures and traditions) incorporating the Program activities;
- Educational clinics and/or development and distribution of physical activity publications incorporating the Program goals and activities along with a ''Challenge Tool Kit;''
- A promotion of the Program by employers to their employees;
- A Program ''Road Show'' celebrating physical activity and fitness by providing demonstrations and coaching lessons for all ages, focusing on Program activities; and
- The translation of Program printed and website materials to encourage increased participation.

## Availability of Funds

There are no Federal funds available for this cosponsorship.

## Eligibility for Cosponsorship

To be eligible, a requester must: (1) Have a demonstrated interest and understanding of physical fitness and/or sports; (2) participate substantively in the cosponsored activity (not just provide funding or logistical support); (3) have an organizational or corporate mission that is not inconsistent with the public health and safety mission of the Department; and (4) agree to sign a cosponsorship agreement with the Office of the PCPFS which will set forth the details of the cosponsored activity.

## Content of Request for Cosponsorship

Each request for cosponsorship should contain a description of: (1) The entity or organization; (2) its background in promoting physical activity/fitness or sports; (3) its proposed involvement in the cosponsored activity; and (4) plan for implementation with timeline.

## Evaluation Criteria

The cosponsor(s) will be selected by the Office of the PCPFS using the following evaluation criteria:

(1) Requester's qualifications and capability to fulfill cosponsorship responsibilities;

(2) Requester's creativity for enhancing the medium for program messages; and

(3) Requester's potential for reaching underserved/special populations.

Dated: March 18, 2003.

**CDR Penelope Royall,**

*Acting Executive Director, President's Council on Physical Fitness and Sports, Department of Health and Human Services.*

[FR Doc. 03–7033 Filed 3–24–03; 8:45 am]

BILLING CODE 4150–35–P

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# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Administration for Children and Families

## Proposed Information Collection Activity; Comment Request

### Proposed Projects

*Title:* National Child Abuse and Neglect Data System.

*OMB No.:* 0980–0229.

*Description:* The Administration on Children, Youth and Families established the National Child Abuse and Neglect Data System (NCANDS) to respond to the 1988 and 1992 amendments (Pub. L. 100–294 and Pub.

L. 102–295) to the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 *et seq.*), as amended, which called for the creation of a coordinated national data collection and analysis program, both universal and case specific in scope, to examine standardized data on false, unfounded, or unsubstantiated reports. In 1988, ACYF embarked on a collaborative effort with the State to develop a voluntary national data collection and analysis program, to collect, compile, and make available State child abuse and neglect reporting information from child protective services agencies in the 50 States, the District of Columbia, and the territories. The first request for annual data was in July 1991. Data collection has continued on an annual basis. The Children's Bureau is currently preparing the 12th annual report based on the NCANDS data.

In 1996, the Child Abuse Prevention and Treatment Act was amended by Public Law 104–235 to require that any State receiving the Basic State Grant work with the Secretary of the Department of Health and Human Services (HHS) to provide specific data on child maltreatment to the extent practicable. The legislation specified the following data elements.

(1) The number of children who were reported to the State during the year as abused or neglected.

(2) Of the number of children described in paragraph (1), the number with respect to whom such reports were—

(A) Substantiated;

(B) Unsubstantiated; or

(C) Determined to be false.

(3) Of the number of children described in paragraph (2)—

(A) The number that did not receive services during the year under the State program funded under this section or an equivalent State program;

(B) The number that received services during the year under the State program funded under this section or an equivalent State program; and

(C) The number that were removed from their families during the year by disposition of the case.

(4) The number of families that received preventive services from the State during the year.

(5) The number of deaths in the State during the year resulting from child abuse or neglect.

(6) Of the number of children described in paragraph (5), the number of such children who were in foster care.

(7) The number of child protective services workers responsible for the intake and screening of reports filed in the previous year.

(8) The agency response time with respect to each such report with respect to initial investigation of reports of child abuse or neglect.

(9) The response time with respect to the provision of services to families and children where an allegation of abuse or neglect has been made.

(10) The number of children protective services workers responsible for intake, assessment, and investigation of child abuse and neglect reports relative to the number of reports investigated in the previous year.

(11) The number of children reunited with their families or receiving family preservation services that, within five years, result in subsequent substantial reports of child abuse and neglect, including the death of a child.

(12) The number of children for whom individuals were appointed by the court to represent the best interests of such children and the average number of out-of-court contracts between such individuals and children.

States that receive the Basic State Grant meet this information requirement by submitting the NCANDS data.

The Children's Bureau proposes to continue collecting the NCANDS data through the two files of the Detailed Case Data Component, the Child File (the case-level component of NCANDS) and the Agency Field (additional aggregate data that cannot be collected at a case level). It also proposes to continue to accept the Summary Data Component Survey from States that are unable to submit the Child File for another 2 years (FFY 2003 and FFY 2004). Technical assistance will be provided to States so that all States can provide the Child File and Agency File for FFY 2005 data.

In order to improve the ability to integrate the data from NCANDS with the Adoption and Foster Care Analysis and Reporting system (AFCARS) data, the Children's Bureau proposes to change the reporting period for submitting NCANDS data from calendar year reporting to a Federal Fiscal Year (FFY) basis starting with FFY 2003. These data will be requested in December 2003 to be submitted by March 2004.

The Children's Bureau also proposes to modify the Child File in order to better meet the data needs of the Child and Family Services Review process and to provide additional data for the Children's Bureau. Two new fields, AFCARS ID and Family Structure, are being proposed. No changes to the Agency File or the Summary Data Component Survey are proposed.

The information collected by NCANDS will be used to understand better the experiences of children and families served by CPS and to guide policy and program development at the national and local levels. An annual report, entitled *Child Maltreatment,* will continue to be published. Data collected through the NCANDS will also be used to support the Department in responding to the requirements of the Government Performance and Results Act; publishing State data in the annual report to Congress on child welfare outcomes; and monitoring States through the Child and Family and Services Review process.

*Respondents:* State governments, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Detailed Case Data Component (Child Field and Agency File by 46 States for first two years) | 52 | 1 | 113 | 5876 |
| Summary Data Component Survey (by 6 States for only 2 years) | 6 | 1 | 32 | 192 |
| Estimated Total Annual Burden Hours | | | | 6068 |

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and

comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 19, 2003.

**Bob Sargis,**

*Reports Clearance Officer.*

[FR Doc. 03–7017 Filed 3–24–03; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science; Cancellation

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is cancelling the meeting of the Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science scheduled for March 21, 2003. This meeting was announced in the **Federal Register** of February 12, 2003 (68 FR 7128).

**FOR FURTHER INFORMATION CONTACT:** Kathleen Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, 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 12539.

Dated: March 19, 2003.

**Linda Arey Skladany,**

*Associate Commissioner for External Relations.*

[FR Doc. 03–7085 Filed 3–20–03; 3:48 pm]

BILLING CODE 4160–01–S

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[CGD13–03–011]**

### Draft Environmental Impact Statement; Proposed Bridge across the Lake Washington Ship Canal and Duwamish River in Seattle, Washington

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of intent; notice of public meeting.

**SUMMARY:** The U.S. Coast Guard, as the lead federal agency, and in cooperation with the Seattle Monorail Project, intends to prepare and circulate a Draft Environmental Impact Statement (DEIS) for a proposed bridge across the Lake Washington Ship Canal and Duwamish River in Seattle, Washington. A Coast Guard bridge permit is required for approval of the location and plans for the bridge project before construction can begin. The U.S. Army Corps of Engineers will be a cooperating agency.

**DATES:** Comments must be received on or before April 24, 2003.

The public scoping meeting will be held on Wednesday, April 9, 2003 from 10 a.m. to 12 noon.

**ADDRESSES:** Comments may be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle WA 98174–1067.

The public scoping meeting will be held at the Seattle Monorail Project, 1904 3rd Avenue, Suite 525, Seattle WA 98101.

**FOR FURTHER INFORMATION CONTACT:** Mr. Austin Pratt, Bridge Administration, Telephone: (206) 220–7282.

**SUPPLEMENTARY INFORMATION:** This notice of intent is published as required by regulations of the Council on Environmental Quality at 40 CFR 1501.7.

The proposed project would construct a new, fixed monorail bridge over the Lake Washington Ship Canal near the existing Ballard Bridge (15th Avenue NW) in Seattle, Washington as part of the construction project for a 14-mile elevated monorail line along the route approved and required by the City of Seattle voters in the November 5, 2002, general election in Seattle, Washington.

The Seattle Monorail Project has already conducted a number of state scoping meetings with the public and affected federal, state, regional and local agencies pursuant to the Washington State Environmental Policy Act. The comments from that scoping process will be available to the Coast Guard, in addition to the comments from agencies and the public submitted during the Coast Guard's scoping process. Consultation with federal resource agencies including National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service will be conducted pursuant to the Endangered Species Act. Consultation with the Washington State Historic Preservation Officer will be conducted pursuant to section 106 of the National Historical Preservation Act.

The Coast Guard intends to enter into an agreement with the Seattle Monorail Project to produce and issue a joint EIS document that satisfies the requirements of both the National Environmental Policy Act and the Washington State Environmental Policy Act.

Alternatives will include no action and alternatives that comply with the purpose and need for the Green Line route as set out in the Seattle Popular Monorail Plan specified by the Seattle voters. Copies of the Seattle Popular Monorail Plan and additional information on the proposed Green Line route are available from the Seattle Monorail Project Web site at *http://www.elevated.org.*

Significant issues to be evaluated include threatened and endangered species, and critical habitat, and impacts on historic properties and navigation.

A public scoping meeting will be held on Wednesday, April 9, 2003 from 10 a.m. to 12 noon at the Seattle Monorail Project, 1904 3rd Avenue, Suite 525, Seattle WA 98101. Interested and affected parties are invited to attend. Written comments are invited from all interested parties to assure that all significant issues are identified and that the full range of alternatives and impacts of the proposed project are addressed. A public hearing will be held after the Draft EIS is issued for public and agency review and comment.

Dated: March 7, 2003.

**Erroll Brown,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

[FR Doc. 03–7077 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–926–03–1420–BJ]**

### Montana: Filing of Plat of Amended Protraction Diagram

**AGENCY:** Bureau of Land Management, Montana State Office, Interior.

**ACTION:** Notice of filing of plat of amended protraction diagram.

**SUMMARY:** The Bureau of Land Management (BLM) will file the plat of the amended protraction diagram of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Brockie, Cadastral Surveyor, Branch of Cadastral Surveyor, Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5125 or (406) 896–5009.

**SUPPLEMENTARY INFORMATION:** The amended protraction diagram was prepared at the request of the U.S. Forest Service and was necessary to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center. The lands for the prepared amended protraction diagram are:

**Principal Meridian, Montana**

Tps. 8, 9, and 10 S., Rs. 2, 3, 4, 5, 6, and 7 E.

The plat, representing the Amended Protraction Diagram 2 Index of unsurveyed Townships 8, 9, and 10 South, Ranges 2, 3, 4, 5, 6, and 7 East, Principal Meridian, Montana, was accepted March 11, 2003.

T. 8 S., R. 7 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 8 South, Range 7 East, Principal Meridian, Montana, was accepted August 2, 2002.

T. 9 S., R. 2 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 9 South, Range 2 East, Principal Meridian, Montana, was accepted August 2, 2002.

T. 9 S., R. 4 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 9 South, Range 4 East, Principal Meridian, Montana, was accepted March 11, 2003.

T. 9 S., R. 5 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 9 South, Range 5 East, Principal Meridian, Montana, was accepted August 2, 2002.

T. 9 S., R. 6 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 9 South, Range 6 East, Principal Meridian, Montana, was accepted August 2, 2002.

T. 9 S., R. 7 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 9 South, Range 7 East, Principal Meridian, Montana, was accepted August 2, 2002.

T. 10 S., R. 2 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 10 South, Range 2 East, Principal Meridian, Montana, was accepted August 2, 2002.

T. 10 S., R. 3 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 10 South, Range 3 East, Principal Meridian, Montana, was accepted August 2, 2002.

T. 10 S., R. 4 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 10 South, Range 4 East, Principal Meridian, Montana, was accepted August 2, 2002.

T. 10 S., R. 5 E.

The plat, representing Amended Protraction Diagram 2 of unsurveyed Township 10 South, Range 5 East, Principal Meridian, Montana, was accepted March 11, 2003.

We will place a copy of the plat of the amended protraction diagram we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this amended protraction diagram, as shown on this plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat of the amended protraction diagram until the day after we have accepted or dismissed all protests and it becomes final, including decisions or appeals.

Dated: March 17, 2003.

**Thomas M. Deiling,**

*Chief Cadastral Surveyor, Division of Resources.*

[FR Doc. 03–6991 Filed 3–24–03; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of a revision of a currently approved information collection (1010–0049).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, subpart B, ''Exploration and Development and Production Plans.''

**DATES:** Submit written comments by May 27, 2003.

**ADDRESSES:** Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the address is: *rules.comments@mms.gov.* Reference ''Information Collection 1010–0049'' in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

**FOR FURTHER INFORMATION CONTACT:** Arlene Bajusz, Rules Processing Team, (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations and forms that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR 250, Subpart B, Exploration and Development and Production Plans.

*OMB Control Number:* 1010–0049.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Sections 11 and 25 of the amended OCS Lands Act require the holders of OCS oil and gas and sulphur leases to submit exploration plans (EPs) and development and production plans (DPPs) for approval before starting these activities. The implementing regulations and associated information collection

requirements are contained in 30 CFR 250, subpart B, Exploration and Development and Production Plans. In addition, MMS has issued Notices to Lessees and Operators (NTLs) that provide supplementary guidance and procedures as applicable to each Region or nationally. These NTLs address the various surveys, reports, plans (including deep water operations plans and conservation information), etc., that are necessary for MMS to approve the exploration or development and production activities.

With this submission, we are requesting renewal of the currently approved information collection requirements of subpart B, and related NTLs, and are revising form MMS–137, OCS Plan Information Form. The revised form has been redesigned and includes additional information on schedule and description of proposed activities and associated anchors with no change to the burden.

The MMS engineers, geologists, geophysicists, and environmental scientists use the information collected under subpart B, and related NTLs, to analyze and evaluate the planned operations to ensure that they will not adversely affect the marine, coastal, or human environment and that they conserve the resources of the OCS. It would be impossible for the Regional Supervisor to make an informed decision on whether to approve the proposed plans, or whether modifications are necessary, without the analysis and evaluation of the required information. The affected States also review the information collected for consistency with approved Coastal Zone Management plans.

We will protect information respondents submit that is considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and 30 CFR 250.196. No items of a sensitive nature are collected. Responses are mandatory.

*Frequency:* On occasion.

*Estimated Number and Description of Respondents:* Approximately 130 Federal OCS oil, gas, and sulphur lessees.

*Estimated Reporting and Recordkeeping ''Hour'' Burden:* The currently approved annual reporting and recordkeeping burden for this collection is 257,470 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

| Citation 30 CFR 250 subpart B and related NTLs | Reporting and recordkeeping requirement | Average burden (hours) |
|---|---|---|
| 201 | Notify MMS and others of preliminary activities and submit follow-up information | 10 |
| 202 | Submit conservation information documents. | 300 |
| 203 | Submit initial exploration plan, including surveys, reports, studies, GOM Region forms MMS–137, MMS–138, MMS–139, etc., including notification requirements. | 580 |
| 203(i), (j), (k), (l), (n), (q) | Submit revised/modified exploration plan, including surveys, reports, studies, departures, etc. | 80 |
| 203(o); 204(s) | Conduct surveys or monitoring programs and submit results; form MMS–141 | 2 |
| 203(p); 204(t) | Submit Application for Permit to Drill. (Burden covered under 1010–0044.) | 0 |
| 204 | Submit initial development and production plan (or DOCD used in western GOM), including surveys, reports, studies, GOM Region forms MMS–137, MMS–138, MMS–139, etc., including notification requirements. | 580 |
| 204 | Submit deepwater operations plans for projects in GOM water depths greater than 1,000 feet and projects utilizing subsea production technology. | 580 |
| 204(k) | Submit preliminary plans for tracts in vicinity of a DPP that requires NEPA procedures | 2 |
| 204(l), (m), (n), (o), (q), (u) | Submit revised/modified development and production plan (or DOCD), including surveys, reports, studies, departures, etc. | 82 |
| 250.200–250.204 | General departure and alternative compliance requests not specifically covered elsewhere in subpart B. | 1 |
| Supplemental NTLs | Retain original copies of surveys, studies, reports, etc. (Note: Respondents would retain these as part of usual and customary business activities. The burden is to make them available to MMS if needed.) | 2 |

*Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* We have identified no non-hour cost burdens for this collection.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not

include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

*Public Comment Policy:* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744.

Dated: March 14, 2003.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*

[FR Doc. 03–7008 Filed 3–24–03; 8:45 am]

BILLING CODE 4310–MR–P

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Outer Continental Shelf (OCS), Alaska Region, Chukchi Sea/Hope Basin

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Call for information and nominations (Call).

**SUMMARY:** The Secretary's decision to consider offering the Chukchi Sea/Hope Basin planning area in the OCS Oil and Gas Leasing Program for 2002–2007 provides for an 18-month ''special-interest'' process beginning with publication of this Call. Based on the information and specific nominations received as a result of this Call, a decision will be made whether to proceed with a sale.

**DATES:** Nominations and comments on the Call must be received no later than 90 days after publication of this document in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Please call Tom Warren at (907) 271–6691 in MMS's Alaska OCS Region.

**SUMMARY INFORMATION:** The objective of this ''special-interest'' leasing option is to foster exploration in a frontier OCS area of potential, but high economic cost, without investment of the considerable time and effort required for holding a typical lease sale. The general approach is to query industry regarding the level of interest in proceeding with a sale in the Chukchi Sea/Hope Basin where we would expect to offer focused areas of specific interest for exploration and to request nominations of such areas. However, we will proceed based on the comments and information we do receive. The lease sale is proposed to pursue the high resource potential of the Chukchi Sea area in conjunction with potential natural gas resources that may extend into the adjacent Hope Basin area. Comments are also being requested from the general public on this special-interest leasing process, including the terms and conditions of a sale. The MMS will consider all comments and nominations in the decision on whether and where within the Chukchi Sea/Hope Basin to proceed with leasing and on the terms and conditions of a lease sale proposal. A decision to offer a nominated area for leasing will be conditioned on an informal commitment from industry to explore the area leased within a specific time period.

This Call does not indicate a preliminary decision to lease in the area described below. If MMS decides to proceed with the sale process, MMS will make the final decision on the specific areas for possible leasing at a later date in the presale process and in compliance with the 5-year program and with applicable laws including all requirements of the National Environmental Policy Act (NEPA) and OCS Lands Act (OCSLA). The MMS may adjust the dimensions of a nominated area after discussions with the nominating company.

### Call for Information and Nominations

*1. Authority*

This Call is published pursuant to the OCSLA, as amended (43 U.S.C. 1331–1356, (1994)), and the regulations issued thereunder (30 CFR part 256 and 30 CFR part 260); and in accordance with the OCS Oil and Gas Leasing Program 2002–2007, approved June 27, 2002.

*2. Purpose of Call*

The purpose of the Call is to gather preliminary information, to request nomination of specific areas of interest to industry, and to request comments on the terms and conditions of offering these special interest lands. The Call also serves to initiate public outreach to assist in preparation of the NEPA analysis for this proposal. This proposal is in keeping with section 102(9) of the OCSLA Amendments of 1978, which states as a purpose of the statute, ''to insure that the extent of oil and natural gas resources of the Outer Continental Shelf is assessed at the earliest practicable time.'' The objective of the ''special-interest'' leasing process is to encourage exploration in a frontier OCS area for the discovery of oil and gas. This area might contain natural gas for potential use in local communities, as well as oil to meet national energy needs. The sale would offer for lease both oil and gas.

Comments, information, and nominations on oil and gas leasing, exploration, and development and production within the Chukchi Sea/Hope Basin are sought from all interested parties. Comments are also being sought on the terms, conditions, and economic incentives of a sale in the Chukchi Sea/Hope Basin. Industry and other interested parties are strongly encouraged to contact the Alaska OCS Region with questions or to discuss interest in the area. This early planning and consultation step is particularly important to this special interest process. The MMS will base its decision on whether to proceed with the presale process and the terms and conditions of a sale on the nominations and other information received in response to this Call. This process will ensure a decision that considers the concerns of all respondents in future decisions in this leasing process pursuant to the OCSLA and regulations at 30 CFR parts 256 and 30 CFR part 260. Commenters are also encouraged to submit comments and suggestions on the ''special-interest'' leasing process in general.

This Call is being issued in accordance with the OCS Oil and Gas Leasing Program 2002–2007, approved June 27, 2002. The program offers two sales in the Chukchi Sea/Hope Basin during the 5-year program. If no interest is expressed in response to this first Call, MMS will defer the sale for one year and reissue the Call the following year. This process will continue throughout the 5-year program until there is sufficient interest to proceed

with the planning steps toward a sale. No more than two rounds of lease issuance in the Chukchi Sea/Hope Basin would occur during this 5-year program.

*3. Description of Area*

The area subject to this Call is located offshore the State of Alaska in the Chukchi Sea, between Cape Krusenstern and Point Barrow. The Chukchi Sea area consists of approximately 6,155 whole and partial blocks (about 13.8 million hectares or 34 million acres). It extends offshore from about 10 to approximately 200 miles in water depths from about 32 feet to approximately 230 feet. A small portion of the northeast corner of the area drops to approximately 3,000 feet. The Hope Basin area consists of approximately 1,243 whole and partial blocks (about 2.6 million hectares or 6.5 million acres). It extends offshore from about 3 to approximately 110 miles in water depths from about 32 feet to approximately 230 feet.

A page size map of the area accompanies this Notice. A large scale Call map showing the boundaries of the area on a block-by-block basis is available without charge from the Public Information Office at the address given below, or by telephone request at (907) 271–6438 or 1–800–764–2627. Copies of Official Protraction Diagrams (OPDs) are also available for $2 each.

Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302, *akwebmaster@mms.gov.*

*4. Instructions on Call*

The Call for Information map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, at the above address.

The Call map delineates the area that is the subject of this Call. Respondents are requested to indicate very specific areas of interest in and comment on the Federal acreage within the boundaries of the Call area that they wish to have included in a proposed sale in the Chukchi Sea/Hope Basin.

If you wish to comment, you may submit your comments by any one the following methods:

- You may mail comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302.
- Comments may be submitted directly from the Internet at *http://www.mms.gov/alaska*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: Comments on Call for Information and Nominations for Proposed 2004 Lease Sale in the Chukchi Sea/Hope Basin'' and your name and return address in your Internet message.
- Finally, you may hand-deliver comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the rulemaking record, which we will honor to the extent allowable by law. Under certain circumstances we can withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

A. *Areas of Interest to the Oil and Gas Industry.* Industry must be candid and very specific regarding the areas they nominate if this process is to succeed. The purpose of this process is to identify focused areas where industry has a significant interest in exploration. Nominations covering large-scale areas will not be helpful in defining these areas.

Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Nominators are asked to submit a list of whole and partial blocks nominated (by OPD and block number) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information and will not be released to the public. The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response. This person will be contacted to set up a mutually agreeable time and place for a meeting with the Alaska OCS Regional Office to present their views regarding the company's nominations.

B. *Terms, Conditions, and Economic Incentives Pertaining to Lease Issuance.* Respondents are requested to comment on the terms, conditions, and economic incentives pertaining to lease issuance for any leases that may be issued as a result of a sale in the Chukchi Sea/Hope Basin. The MMS is aware of the lack of infrastructure and distance from shore to some of the blocks in this area and will consider these factors in designing any incentives. The following are being considered for use in this sale:

—Lease term of 10 years
—Submission of an exploration plan within 8 years of lease issuance
—Economic incentives structured similar in form to those contained in the Proposed Notice of Sale for Beaufort Sea Sale 186 (68 FR 8306, February 20, 2003). Incentives proposed for Beaufort Sea Sale 186 are:
—Royalty suspension volumes (RSV) for oil production (with possible consideration for gas)
—Subject to a price floor per barrel below which oil production that is royalty free does not count against the RSV
—Price ceiling per barrel above which production must bear full royalties

C. *Relation to Coastal Management Plans.* Comments also are sought on potential conflicts with approved local coastal management plans (CMP) that may result from the proposed sale and future OCS oil and gas activities. These comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Commenters are requested to list block numbers or outline the subject area on the large-scale Call map.

*5. Use of Information From Call*

Information submitted in response to this Call will be used for several purposes. We will use responses to:

—Determine whether to proceed with a competitive oil and gas lease sale in the Chukchi Sea/Hope Basin
—Identify specific areas of interest for oil and/or gas exploration and development
—Identify environmental effects and potential use conflicts
—Assist in the public outreach for the environmental analysis
—Develop possible alternatives to the proposed action
—Develop lease terms and conditions and mitigating measures
—Identify potential conflicts between oil and gas activities and the Alaska CMP

*6. Existing Information*

An extensive environmental, social, and economic studies program has been

underway in the Alaska OCS Region since 1976, including studies in this area. The emphasis has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological and socio-cultural effects of oil and gas activities.

The MMS has had two past sales in the Chukchi Sea area. In May 1998, Sale 109 was held and resulted in 350 leases being issued. In August 1991, Sale 126 was held and resulted in 28 leases being issued. There were four exploratory wells drilled, but all have been permanently plugged and abandoned. All 378 leases have since been relinquished or have expired. For the Chukchi Sea Planning Area, it is estimated that undiscovered conventionally recoverable resources are 15.46 billion barrels of oil and 60.11 trillion cubic feet of gas. No lease sales have been held in the Hope Basin area. For the Hope Basin Planning Area, it is estimated that undiscovered conventionally recoverable resources are 0.09 billion barrels of oil and 3.38 trillion cubic feet of gas.

Information on the studies program, completed studies, and a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 271–6577, or by written request at the address stated under Description of Area. A request may also be made via the Alaska Region Web site at *akwebmaster@mms.gov*.

*7. Tentative Schedule*

If MMS receives specific nominations from industry in response to this Call and decides to proceed with the pre-sale process, the following is a list of tentative milestone dates applicable to a Chukchi Sea/Hope Basin sale in 2004:

| | Tentative process milestones for proposed 2004 Chukchi Sea/Hope Basin Sale |
|---|---|
| Call published/public outreach initiated | March 2003. |
| Comments due on Call | June 2003. |
| Decision whether to proceed/Area Identification | July 2003. |
| NEPA analysis | January 2004. |
| Consistency Determination/Proposed Notice of Sale | April 2004. |
| Governor's Comments due | June 2004. |
| Final Notice of Sale published | August 2004. |
| Sale | September 2004. |

Dated: March 19, 2003.

**R.M. "Johnnie" Burton,**

*Director, Minerals Management Service.*

[FR Doc. 03–7009 Filed 3–24–03; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF THE INTERIOR

## Minerals Mangement Service

## Outer Continental Shelf (OCS), Alaska Region, Norton Basin

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Call for information and nominations (Call).

**SUMMARY:** The Secretary's decision to consider offering the Norton Basin planning area in the OCS Oil and Gas Leasing Program for 2002–2007 provides for an 18-month "special-interest" process beginning with publication of this Call. Based on the information and specific nominations received as a result of this Call, a decision will be made whether to proceed with a sale.

**DATES:** Nominations and comments on the Call must be received no later than 90 days after publication of this document in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Please call Tom Warren at (907) 271–6691 in MMS's Alaska OCS Region.

**SUPPLEMENTARY INFORMATION:** The objective of this "special-interest" leasing option is to foster exploration in a high-cost frontier OCS area remote from oil and gas infrastructure without investment of the considerable time and effort required for holding a typical lease sale. The general approach is to query industry regarding the level of interest in proceeding with a sale in the Norton Basin where we would expect to offer focused areas of specific interest for exploration and to request nominations of such areas. However, we will proceed based on the comments and information we do receive. Norton Basin may contain quantities of natural gas, which might be used for western Alaska communities if economically feasible. Comments are also being requested from the general public on this special-interest leasing process, including the terms and conditions of a sale. The MMS will consider all comments and nominations in the decision on whether and where within the Norton Basin to proceed with leasing and on the terms and conditions of a lease sale proposal. A decision to offer a nominated area for leasing will be conditioned on an informal commitment from industry to explore the area leased within a specific time period.

This is the second Call issued for the Norton Basin for this 5-year program. The first Call was published in the **Federal Register** on January 22, 2002. No interest was expressed; therefore, the process was stopped and deferred to this year. If no interest is expressed in response to this second Call, MMS will defer the sale for one year and reissue the Call the following year. This process will continue throughout the 5-year program until there is sufficient interest to proceed with the planning steps toward a sale. Only one round of lease issuance in Norton Basin would occur during this 5-year program.

This Call does not indicate a preliminary decision to lease in the area described below. If no interest is expressed, MMS will defer the sale for one year and reissue the Call the following year. If MMS decides to proceed with the sale process, MMS will make the final decision on the specific areas for possible leasing at a later date in the presale process and in compliance with the 5-year program and with applicable laws including all requirements of the National Environmental Policy Act (NEPA) and the OCS Lands Act (OCSLA). The MMS may adjust the dimensions of a nominated area after discussions with the nominating company(ies).

**Call for Information and Nominations**

*1. Authority*

This Call is published pursuant to the OCSLA, as amended (43 U.S.C. 1331–1356, (1994)), and the regulations issued thereunder (30 CFR part 256 and 30 CFR part 260); and in accordance with the OCS Oil and Gas Leasing Program 2002–2007, approved June 27, 2002.

*2. Purpose of Call*

The purpose of the Call is to gather preliminary information, to request nomination of specific areas of interest to industry, and to request comments on the terms and conditions of offering these special interest lands. The Call also serves to initiate public outreach to assist in preparation of the NEPA analysis for this proposal. This proposal is in keeping with section 102(9) of the OCSLA Amendments of 1978, which states as a purpose of the statute, ''to insure that the extent of oil and natural gas resources of the OCS is assessed at the earliest practicable time.'' The objective of the ''special-interest'' leasing process is to encourage exploration in a frontier OCS area for the discovery of oil and gas. This area might contain natural gas for potential use in local communities. The sale would offer for lease both oil and gas.

Comments, information, and nominations on oil and gas leasing, exploration, and development and production within the Norton Basin are sought from all interested parties. Comments are also being sought on the terms, conditions, and economic incentives of a sale in the Norton Basin. Industry and other interested parties are strongly encouraged to contact the Alaska OCS Region with questions or to discuss interest in the area. This early planning and consultation step is particularly important to this special interest process. The MMS will base its decision on whether to proceed with the presale process and the terms and conditions of a sale on the nominations and other information received in response to this Call. This process will ensure a decision that considers the concerns of all respondents in future decisions in this leasing process pursuant to the OCSLA and regulations at 30 CFR part 256 and 30 CFR part 260. Commenters are also encouraged to submit comments and suggestions on the ''special-interest'' leasing process in general.

This Call is being issued in accordance with the OCS Oil and Gas Leasing Program 2002–2007, approved June 27, 2002. The program offers one sale in the Norton Basin during the 5-year program. This is the second Call issued for the Norton Basin Program Area. The first Call was published in the **Federal Register** on January 22, 2002, and no interest was expressed.

*3. Description of Area*

The area subject to this Call is located offshore the State of Alaska in the northern Bering Sea, west and south off the coast of the Seward Peninsula. It consists of approximately 4,742 whole and partial blocks (about 10.1 million hectares or 25 million acres). It extends offshore from about 3 to approximately 320 miles in water depths from about 25 feet to approximately 650 feet.

A page size map of the area accompanies this Notice. A large scale Call map showing the boundaries of the area on a block-by-block basis is available without charge from the Public Information Office at the address given below, or by telephone request at (907) 271–6438 or 1–800–764–2627. Copies of Official Protraction Diagrams (OPDs) are also available for $2 each. Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska, 99508–4302, *akwebmaster@mms.gov.*

*4. Instructions on Call*

The Call for Information map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, at the above address.

The Call map delineates the area that is the subject of this Call. Respondents are requested to indicate very specific areas of interest in and comment on the Federal acreage within the boundaries of the Call area that they wish to have included in a proposed sale in the Norton Basin.

If you wish to comment, you may submit your comments by any one the following methods:

- You may mail comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302.
- Comments may be submitted directly from the Internet at *http://www.mms.gov/alaska.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: Comments on Call for Information and Nominations for Proposed 2004 Lease Sale in Norton Basin'' and your name and return address in your Internet message.

Finally, you may hand-deliver comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the rulemaking record, which we will honor to the extent allowable by law. Under certain circumstances we can withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

A. *Areas of Interest to the Oil and Gas Industry.* Industry must be candid and very specific regarding the areas they nominate if this process is to succeed. The purpose of this process is to identify and expect to offer only small, focused areas where industry has a significant interest in exploration. Nominations covering large-scale areas will not be helpful in defining these areas.

Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Nominators are asked to submit a list of whole and partial blocks nominated (by OPD and block number) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information and will not be released to the public. The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response. This person will be contacted to set up a mutually agreeable time and place for a meeting with the Alaska OCS Regional Office to present their views regarding the company's nominations.

B. *Terms, Conditions, and Economic Incentives Pertaining to Lease Issuance.* Respondents are requested to comment on the terms, conditions, and economic incentives pertaining to lease issuance for any leases that may be issued as a result of a sale in the Norton Basin. The MMS is aware of the lack of infrastructure and distance from shore to some of the blocks in this area and will consider these factors in designing any incentives. The following are being considered for use in this sale:

—Lease term of 10 years

—Submission of an exploration plan within 8 years of lease issuance
—Economic incentives structured similar in form to those contained in the Proposed Notice of Sale for Beaufort Sea Sale 186 (68 FR 8306, February 20, 2003).

Incentives proposed for Beaufort Sea Sale 186 are:
—Royalty suspension volumes (RSV) for oil production (with possible consideration for gas)
—Subject to a price floor per barrel below which oil production that is royalty free does not count against the RSV
—Price ceiling per barrel above which production must bear full royalties

C. *Relation to Coastal Management Plans.* Comments also are sought on potential conflicts with approved local coastal management plans (CMP) that may result from the proposed sale and future OCS oil and gas activities. These comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Commenters are requested to list block numbers or outline the subject area on the large-scale Call map.

*5. Use of Information from Call*

Information submitted in response to this Call will be used for several purposes. We will use responses to:
—Determine whether to proceed with a competitive oil and gas lease sale in Norton Basin
—Identify specific areas of interest for oil and/or gas exploration and development
—Identify environmental effects and potential use conflicts
—Assist in the public outreach for the environmental analysis
—Develop possible alternatives to the proposed action
—Develop lease terms and conditions and mitigating measures
—Identify potential conflicts between oil and gas activities and the Alaska CMP

*6. Existing Information*

An extensive environmental, social, and economic studies program has been underway in the Alaska OCS Region since 1976, including studies in this area. The emphasis has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological and socio-cultural effects of oil and gas activities.

The MMS has had one past sale in the Norton Basin area. In March 1983, Sale 57 was held and resulted in 59 leases being issued. There were six exploratory wells drilled, but all have been permanently plugged and abandoned. All 59 leases have since been relinquished or have expired. For the Norton Basin Planning Area, it is estimated that undiscovered conventionally recoverable resources are 0.05 billion barrels of oil and 2.71 trillion cubic feet of gas.

Information on the studies program, completed studies, and a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 271–6577, or by written request at the address stated under Description of Area. A request may also be made via the Alaska Region Web site at *akwebmaster@mms.gov.*

*7. Tentative Schedule*

If MMS receives specific nominations from industry in response to this Call and decides to proceed with the pre-sale process, the following is a list of tentative milestone dates applicable to a Norton Basin sale in 2004:

| | Tentative Process milestones for proposed 2004 Norton Basin Sale |
|---|---|
| Call published/public outreach initiated. | March 2003. |
| Comments due on Call | June 2003. |
| Decision whether to proceed/Area Identification. | July 2003. |
| NEPA analysis | January 2004. |
| Consistency Determination/Proposed Notice of Sale. | April 2004. |
| Governor's Comments due | June 2004. |
| Final Notice of Sale published. | August 2004. |
| Sale | September 2004. |

Dated: March 19, 2003.

**R. M. "Johnnie" Burton,**

*Director, Minerals Management Service.*

[FR Doc. 03–7010 Filed 3–24–03; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

March 18, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or E-Mail: *King.Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

*The OMB is particularly interested in comments which:*

* 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;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including 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.

*Agency:* Employment and Training Administration (ETA).

*Type of Review:* Extension of a currently approved collection.

*Title:* Claims and Payment Activities.

*OMB Number:* 1205–0010.

*Affected Public:* State, Local, or Tribal Government.

*Type of Response:* Reporting.

*Frequency:* Monthly.

*Number of Respondents:* 53.

| Report | Annual responses | Average response time (hours) | Annual burden hours |
|---|---|---|---|
| Regular Report | 636 | 2 | 1,272 |
| Extended Benefits Report | 12 | 1.75 | 21 |
| Reported Time Compensation Report | 66 | 1 | 66 |
| Total | 714 | | 1,359 |

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The Claims and Payment Activities report (Form ETA–5159) provides important program information on claims taking and benefit payment activities under state/federal unemployment insurance laws. These data are needed for budget preparation and control, program planning and evaluation, personnel assignment, actuarial and program research, and for accounting to Congress and the public.

**Darrin A. King,**

*Acting Departmental Clearance Officer.*

[FR Doc. 03–7012 Filed 3–24–03; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### Federal Advisory Council on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the Federal Advisory Council on Occupational Safety and Health (FACOSH), established under Section 1–5 of Executive Order 12196 on February 6, 1980, published in the **Federal Register**, February 27, 1980 (45 FR 1279).

FACOSH will meet on April 10, 2003, starting at 1:30 p.m., in Room N–3437 A/B/C/ of the Department of Labor Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. The meeting will adjourn at approximately 4:30 p.m., and will be open to the public. All persons wishing to attend this meeting must exhibit photo identification to security personnel upon entering the building.

*Agenda will include:*

1. Call to Order
2. Old Business

- Update on Federal Recordkeeping proposed change
- 58th Annual Federal Safety and Health Awards Ceremony and Training
- Update on Federal Executive Institute Training Initiative
- SHARE '04 Initiative
- Federal Worker 2000 Initiative
- Webpage for FACOSH and FSHC

3. New business
4. Adjournment

Written data, views, or comments may be submitted, preferably with 20 copies, to the Office of Federal Agency Programs at the address provided below. All such submissions, received by April 2, 2003, will be provided to the Federal Advisory Council members and will be included in the meeting record. Anyone wishing to make an oral presentation should notify the Office of Federal Agency Programs by the close of business on April 7, 2003. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Persons who request the opportunity to address the Federal Advisory Council may be allowed to speak, as time permits, at the discretion of the Chairperson. Individuals with disabilities who wish to attend the meeting should contact Tom Marple at the address indicated below, if special accommodations are needed.

For additional information, please contact Thomas K. Marple, Director, Office of Federal Agency Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3622, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 693–2122. An official record of the meeting will be available for public inspection at the Office of Federal Agency Programs.

Signed at Washington, DC, this 18 day of March 2003.

**John L. Henshaw,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 03–7011 Filed 3–24–03; 8:45 am]

BILLING CODE 4510–26–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. NRTL1–89]**

### Intertek Testing Services NA, Inc., Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the Agency's final decision on the application of Intertek Testing Services NA, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

**EFFECTIVE DATE:** This recognition becomes effective on March 25, 2003, and, unless modified in accordance with 29 CFR 1910.7, continues in effect while ITSNA remains recognized by OSHA as an NRTL.

**FOR FURTHER INFORMATION CONTACT:** Sherrey Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

**SUPPLEMENTARY INFORMATION:**

#### Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of Intertek Testing Services NA, Inc. (ITSNA), as a Nationally Recognized Testing Laboratory (NRTL). ITSNA's expansion covers the use of an additional testing site and additional test standards. OSHA's current scope of recognition for ITSNA may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/its.html*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in section 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products

covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

ITSNA submitted its application to expand its recognition to use additional test standards and an additional site located in Lexington, Kentucky, on February 16, 2001 (*see* Exhibit 39). The NRTL Program staff performed the on-site review (assessment) of the facility on October 15–17, 2001, and provided a positive recommendation on the expansion in their report (*see* Exhibit 40). However, the Agency delayed processing of the applications pending resolution of certain findings made by OSHA during its audits of other ITSNA sites already recognized. The NRTL Program staff obtained information in October 2002, which resolved these findings, and determined that OSHA could proceed with processing the applications. OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** on January 6, 2003 (68 FR 583). The notice requested submission of any public comments by January 21, 2003. OSHA received one comment from the American National Standards Institute (ANSI), which corrected our reference to a link on their web site that provides information about ANSI-approved standards. That correction is reflected in this current notice.

The previous notice published by OSHA for ITSNA's recognition covered an expansion of recognition to include an additional site, which became effective on January 28, 2002 (67 FR 3912).

The current addresses of the ITSNA facilities already recognized by OSHA are:

ITSNA Antioch, 2200 Wymore Way, Antioch, California 94509;
ITSNA Atlanta, 1950 Evergreen Blvd., Suite 100, Duluth, Georgia 30096;
ITSNA Boxborough, 70 Codman Hill Road, Boxborough, Massachusetts 01719;
ITSNA Cortland, 3933 U.S. Route 11, Cortland, New York 13045;
ITSNA Los Angeles, 27611 LaPaz Road, Suite C, Laguna Niguel, California 92677;
ITSNA Madison, 8431 Murphy Drive, Middleton, Wisconsin 53562;
ITSNA Minneapolis, 7250 Hudson Blvd., Suite 100, Oakdale, Minnesota 55128;
ITSNA San Francisco, 1365 Adams Court, Menlo Park, CA 94025;
ITSNA Sweden AB, Box 1103, S–164 #22, Kista, Stockholm, Sweden;
ITSNA Totowa, 40 Commerce Way, Unit B, Totowa, New Jersey 07512;
ITSNA Vancouver, 211 Schoolhouse Street, Coquitlam, British Columbia, V3K 4X9 Canada;
ITSNA Hong Kong, 2/F., Garment Centre, 576 Castle Peak Road, Kowloon, Hong Kong;
ITSNA Taiwan, 14/F., Huei Fung Building, 27, Chung Shan North Road, Sec. 3, Taipei 10451, Taiwan.

The current address of the additional ITSNA testing site covered by the expansion is:

ITSNA Lexington, 731 Enterprise Drive, Lexington, Kentucky 40510.

**Existing Conditions**

Currently, OSHA imposes conditions listed at the end of this notice on its recognition of ITSNA. These conditions would apply also to the recognition of the Lexington site. As mentioned in previous notices, these conditions apply solely to ITSNA's NRTL operations and are in addition to any other condition that OSHA normally imposes in its recognition of any organization as an NRTL.

**Final Decision and Order**

The NRTL Program staff has examined the applications, the assessor's report, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that Intertek Testing Services NA, Inc., has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the additional standards and the additional site subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of ITSNA, subject to these limitations and conditions.

**Limitations**

*Recognition of Facilities*

The application contains sufficient information demonstrating the testing capabilities of the Lexington, Kentucky, site listed above. Also, the application information shows that Lexington is wholly-owned and operated by ITSNA. OSHA's recognition of the additional site would not be limited to any particular test standards. However, recognition of this site would be limited to performing product testing only to the test standards for which the site has the proper capability and programs, and for which OSHA has recognized ITSNA. This treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate multiple sites. The Agency would not recognize the site to issue certifications under ITSNA's operations as an NRTL. Currently, ITSNA issues such certifications only at specific sites listed above, and OSHA must review and accept the Lexington site before ITSNA issues certifications there. In addition, OSHA would permit the site to use of all eight of the ''supplemental'' programs. OSHA has already recognized ITSNA for these programs and, as a result, we are not listing them again in this notice.

OSHA developed the programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under the programs only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

*Expansion for Additional Standards*

OSHA limits the expansion to testing and certification of products for demonstration of conformance to the following 41 test standards, and OSHA has determined the standards are ''appropriate,'' within the meaning of 29 CFR 1910.7(c).

ANSI A17.5 Elevators and Escalator Electrical Equipment;
ANSI C37.23* Metal Enclosed Bus and Calculating Losses in Isolated-Phase Bus;
ANSI ICS 2 Industrial Control Devices, Controllers and Assemblies;
ANSI S82.02.02 Electrical Equipment for Measurement, Control, and Laboratory Use;
ANSI Z8.1 Commercial Laundry and Dry-cleaning Operations-Safety Requirements;
ANSI Z21.1b Household Cooking Gas Appliances;
ANSI Z21.19 Refrigerators Using Gas Fuel;
ANSI Z21.22 Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply Systems;
ANSI Z21.41 Quick-Disconnect Devices for Use with Gas Fuel;
ANSI Z21.42 Gas-Fired Illuminating Appliances;
ANSI Z21.45 Flexible Connectors of Other Than All-Metal Construction for Gas Appliances;
ANSI Z21.54 Gas Hose Connectors for Portable Outdoor Gas-Fired Appliances;

ANSI Z21.61 Gas-Fired Toilets;
ANSI Z21.66 Automatic Vent Damper Devices for Use With Gas-Fired Appliances Electrically Operated;
ANSI Z21.69 Connectors for Movable Gas Appliances;
ANSI Z21.73 Portable Type Gas Camp Lights;
ANSI Z21.74 Portable Refrigerators for Use With HD–5 Propane Gas;
ANSI Z21.76 Gas-Fired Unvented Catalytic Room Heaters for Use With Liquefied Petroleum (LP) Gases;
UL 14B Sliding Hardware for Standard, Horizontally Mounted Tin-Clad Fire Doors;
UL 14C Swinging Hardware for Standard Tin-Clad Fire Doors Mounted Singly or In Pairs;
UL 142 Steel Aboveground Tanks for Flammable and Combustible Liquids;
UL 147 Hand-Held Torches for Fuel Gases;
UL 155 Tests of Fire Resistance of Vault and File Room Doors;
UL 305 Panic Hardware;
UL 331 Strainers for Flammable Fluids and Anhydrous Ammonia;
UL 555 Fire Dampers;
UL 636 Holdup Alarm Units and Systems;
UL 746A Polymeric Materials—Short Term Property Evaluations;
UL 746B Polymeric Materials—Long Term Property Evaluations;
UL 746E Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed Wiring Boards;
UL 896 Oil-Burning Stoves;
UL 1010 Receptacle-Plug Combinations for Use in Hazardous (Classified) Locations;
UL 1034 Burglary Resistant Electric Locking Mechanisms;
UL 1088 Temporary Lighting Strings;
UL 1241 Junction Boxes for Swimming Pool Lighting Fixtures;
UL 1242 Intermediate Metal Conduit;
UL 1610 Central-Station Burglar-Alarm Units;
UL 1637 Home Health Care Signaling Equipment;
UL 2200 Stationary Engine Generator Assemblies;
FMRC3260 Flame Radiation Detectors for Automatic Fire Alarm Signaling;
UL 60335–1 Safety of Household and Similar Electrical Appliances, Part 1; General Requirements.

* This standard is approved for equipment or materials intended for use in commercial and industrial power system applications. This standard is not approved for equipment or materials intended for use in installations that are excluded from the provisions of subpart S in 29 CFR 1910 by 1910.302(a)(2).

Many of the test standards listed above are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we often use the designation of the standards developing organization (*e.g.*, UL 1012) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 1012). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ''NSSN'' (*http://www.nssn.org*), an organization partially sponsored by ANSI, to find out whether or not a test standard is currently ANSI-approved.

**Conditions**

ITSNA must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

ITSNA may perform safety testing for hazardous location products only at the specific ITSNA sites that OSHA has recognized, and that have been pre-qualified for such testing by the ITSNA Chief Engineer. In addition, all safety test reports for hazardous location products must undergo a documented review and approval at the Cortland testing facility by a test engineer qualified in hazardous location safety testing, prior to ITSNA's initial or continued authorization of the certifications covered by these reports.

ITSNA may not test and certify any products for a client that is a manufacturer or vendor that is either owned in excess of 2% by ITSLtd or affiliated organizationally with ITSNA.

OSHA must be allowed access to ITSNA's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ITSNA has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ITSNA must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ITSNA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ITSNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

ITSNA will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

ITSNA will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed in Washington, DC, this 25th day of February, 2003.

**John L. Henshaw,**

*Assistant Secretary.*

[FR Doc. 03–7014 Filed 3–24–03; 8:45 am]

**BILLING CODE 4510–26–P**

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

**[Docket No. NRTL4–93]**

## Underwriters Laboratories Inc., Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the Agency's final decision on the applications of Underwriters Laboratories Inc. for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

**EFFECTIVE DATE:** This recognition becomes effective on March 25, 2003, and, unless modified in accordance with 29 CFR 1910.7, continues in effect while UL remains recognized by OSHA as an NRTL.

**FOR FURTHER INFORMATION CONTACT:** Sherrey Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

**SUPPLEMENTARY INFORMATION:**

### Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of Underwriters Laboratories Inc. (UL) as a Nationally Recognized Testing Laboratory (NRTL). UL's expansion covers the use of three additional testing sites. OSHA's current scope of recognition for UL may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/ul.html*.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in section 1910.7 of title 29, Code of Federal Regulations

(29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

UL submitted an application, dated November 8, 2001 (*see* Exhibit 27), to expand its recognition to include a site in Seoul, Korea, and another application, dated March 15, 2002 (*see* Exhibit 27–1), to expand its recognition to include a site in Neu-Isenburg, Germany, and a site in Veenendaal, Netherlands. The NRTL Program staff performed an on-site review (assessment) of the Korea facility on March 11–14, 2002. In the on-site review report, dated May 23, 2002 (*see* Exhibit 28), the program staff recommended a ''positive finding,'' which means a positive recommendation on the recognition to the Assistant Secretary. However, the Agency delayed consideration of the application in order to combine it for processing purposes with the application that had by then been received for the two additional sites listed above. The NRTL Program staff performed an on-site review (assessment) of the Netherlands facility on June 11–14, 2002, and an on-site review (assessment) of the Germany facility on June 18–21, 2002. In each on-site review report, dated September 27 and 30, 2002 (see Exhibits 28 and 28–1), respectively, the program staff recommended a ''positive finding.'' OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** on January 6, 2003 (68 FR 583). The notice requested submission of any public comments by January 21, 2003. OSHA did not receive any comments pertaining to the application.

The previous notice published by OSHA for UL's recognition covered a renewal and expansion of recognition, which became effective on May 8, 2002 (67 FR 30966).

The current addresses of the UL facilities (sites) already recognized by OSHA are:

Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

Underwriters Laboratories Inc., 1285 Walt Whitman Road, Melville, Long Island, New York11747.

Underwriters Laboratories Inc., 1655 Scott Boulevard, Santa Clara, California 95050.

Underwriters Laboratories Inc., 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709.

Underwriters Laboratories Inc., 2600 NW. Lake Road, Camas, Washington, 98607.

UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong.

UL International Services, Ltd., Taiwan Branch, 4th Floor, 260 Da-Yeh Road, Pei Tou DistrictTaipei City, Taiwan.

UL International Demko A/S, Lyskaer 8, P.O. Box 514, DK–2730, Herlev, Denmark.

Underwriters Laboratory International (U.K.) Ltd., Wonersh House, The Guildway, Old Portsmouth RoadGuildford, Surrey GU3 1LR, United Kingdom.

Underwriters Laboratory International Italia S.r.l., Via Archimede 42, 1–20041 Agrate Brianza, Milan, Italy. Testing facility: Z.I. Predda Niedda st. 18, I–07100, Sassari, Italy.

Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada MIR 3A9.

UL Japan Co., Ltd., Shimbashi Ekimae Bldg.—1 Gohkan, 4th floor, Room 402, 2–20–15 Shimbashi Minato Ku, Tokyo 105–0004, Japan.

The current addresses of the three additional UL sites covered by the expansion are:

UL Korea, Ltd., #805, Manhattan Building 36–2, Yeoui-dong, Yeoungdeungpo-gu, Seoul 150–010, Korea.

UL International Germany GmbH, Frankfurter Strasse 229, D–63263 Neu-Isenburg, Germany.

UL International (Netherlands) B.V., Landjuweel 52, NL–3905 PH Veenendaal, Netherlands.

## Final Decision and Order

The NRTL Program staff has examined the applications, the assessor's reports, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that Underwriters Laboratories Inc. has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the above additional sites subject to the limitation and conditions, listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of UL, subject to this limitation and these conditions.

## Limitation

*Recognition of Facilities*

The applications contain sufficient information demonstrating the testing capabilities of the Korean, German, and Netherlands sites listed above. OSHA's recognition of the additional sites would not be limited to any particular test standards. However, recognition of these sites would be limited to performing product testing only to the test standards for which each site has the proper capability and programs, and for which OSHA has recognized UL. This treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate multiple sites. In addition, OSHA would permit the sites to use all eight of the ''supplemental'' programs, although not all programs would necessarily be used in the near future. UL's scope of recognition already includes these programs.

OSHA developed the programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under the programs only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

*Conditions*

UL must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to UL's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If UL has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

UL must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, UL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

UL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

UL will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

UL will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed in Washington, DC, this 25th day of February, 2003.

**John L. Henshaw,**

*Assistant Secretary.*

[FR Doc. 03–7015 Filed 3–24–03; 8:45 am]

BILLING CODE 4510–26–P

## NATIONAL CREDIT UNION ADMINISTRATION

### Notice of Meeting; Sunshine Act

**TIME AND DATE:** 2 p.m., Thursday, March 27, 2003.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Requests from Three (3) Federal Credit Unions to Convert to Community Charters.
2. *Proposed Rule:* Parts 702, 704, 712, and 723 of NCUA's Rules and Regulations, Member Business Loans.
3. *Final Rule:* Interpretive Ruling and Policy Statement (IRPS) 03–1, Section 701.1 of NCUA's Rules and Regulations, Amendments to NCUA's Chartering and Field of Membership Policies.

**RECESS:** 3:15 p.m.

**TIME AND DATE:** 3:30 p.m., Thursday, March 27, 2003.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Revision to Delegations of Authority. Closed pursuant to Exemptions (2) and (6).
2. One (1) Insurance Appeal. Closed pursuant to Exemption (6).

**FOR FURTHER INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone: 703–518–6304

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 03–7118 Filed 3–20–03; 4:11 pm]

BILLING CODE 7535–01–M

## NATIONAL SCIENCE FOUNDATION

### NSF–NASA National Astronomy & Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* NSF–NASA National Astronomy & Astrophysics Advisory Committee (13883).

*Date and Time:* April 8–9, 2003, 8 a.m.–5 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

*Type of Meeting:* Open.

*Contact Person:* Dr. G. Wayne Van Citters, Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4908.

*Purpose of Meeting:* To provide advice and recommendations to the National Science Foundation (NSF) and the National Aeronautics and Space Administration (NASA) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the two agencies.

*Agenda:* To hear presentations of current programming by representatives from NSF and NASA; to discuss current and potential areas of cooperation between the two agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: March 19, 2003.

**Susanne E. Bolton,**

*Committee Management Officer.*

[FR Doc. 03–6965 Filed 3–24–03; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

**SUMMARY:** The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Application/Permit for Use of the Two White Flint (TWFN) Auditorium.
2. *Current OMB approval number:* 3150–0181.
3. *How often the collection is required:* Each time public use of the NRC auditorium is requested.
4. *Who is required or asked to report:* Members of the public requesting use of the NRC Auditorium.
5. *The number of annual respondents:* 5.
6. *The number of hours needed annually to complete the requirement or request:* 1.25 hours (15 minutes per request).
7. *Abstract:* In accordance with the Public Buildings Act of 1959, an agreement was reached between the Maryland-National Capital Park and Planning Commission (MPPC), the General Services Administration (GSA) and the NRC, that the NRC auditorium will be made available for public use. Public users of the auditorium will be required to complete NRC Form 590, Application/Permit for Use of Two White Flint North (TWFN) Auditorium. The information is needed to allow for administrative and security review, scheduling, and to make a determination that there are no anticipated problems with the requester prior to utilization of the facility.

Submit, by May 27, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC world wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC

home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *infocollects@nrc.gov*.

Dated in Rockville, Maryland, this 19th day of March, 2003.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 03–7029 Filed 3–24–03; 8:45 am]

BILLING CODE 7590–01–P

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Agency Report Form Under OMB Review

**AGENCY:** Overseas Private Investment Corporation.

**ACTION:** Request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on January 15, 2003, in 66 FR 10331, at which time a 60-calendar day comment period was announced. This comment period ended March 17, 2003. No comments were received in response to this notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

**DATES:** Comments must be received within 30-calendar days of this Notice.

**ADDRESSES:** Copies of the subject form and the request for review submitted to OMB may be obtained from Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

*OPIC Agency Submitting Officer:* Bruce I. Campbell, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

*OMB Reviewer:* David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, (202) 395–3897.

**Summary of Form Under Review**

*Type of Request:* Reinstatement, with change, of a previously approved collection for which approval is expiring.

*Title:* Sponsor Disclosure Report.

*Form Number:* OPIC–129.

*Frequency of Use:* Once per major sponsor, per project.

*Type of Respondents:* Business or other institutions.

*Standard Industrial Classification Codes:* All.

*Description of Affected Public:* U.S. companies sponsoring projects overseas.

*Reporting Hours:* 5 hours per project.

*Number of Responses:* 150 per year.

*Federal Cost:* $12,730 per year.

*Authority for Information Collection:* Sections 231 and 234(b) and (c) of the Foreign Assistance Act of 1961, as amended.

*Abstract (Needs and Uses):* The OPIC 129 form is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: March 18, 2003.

**Eli Landy,**

*Senior Counsel, Administrative Affairs, Department of Legal Affairs.*

[FR Doc. 03–6973 Filed 3–24–03; 8:45 am]

BILLING CODE 3210–01–M

## POSTAL RATE COMMISSION 39 U.S.C. 3623

**[Docket No. MC2003–1; Order No. 1365]**

### Customized Market Mail

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice and order instituting mail classification case.

**SUMMARY:** This document informs the public that the Postal Service has requested an expedited Commission decision on Customized Market Mail (CMM). CMM would allow non-rectangular pieces of Standard Mail, which currently are prohibited because of their shape, to be mailed under certain conditions. The document identifies key deadlines for various filings, authorizes settlement proceedings, and makes other preliminary procedural rulings.

**DATES:** 1. April 3, 2003—preferred date for participant's submission of notices of intervention, requests for hearing, and responses to expedition request and waiver motion.

2. April 9, 2003—prehearing conference; final date for intervention, requests for hearing, and responses to expedition request and waiver motion.

**ADDRESSES:** Submit responsive filings electronically via the Commission's Filing Online system at *http://www.prc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202–789–6818.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

Notice is hereby given that on March 14, 2003, the United States Postal Service filed a formal request with the Postal Rate Commission, pursuant to 39 U.S.C. 3623, seeking a recommended decision on a proposed minor classification change for a new Standard Mail option referred to as Customized Market Mail (CMM). The Service's designation of its request as a minor classification change signals its interest in application of procedural rules that allow for expedited consideration and issuance of a Commission decision, if no hearing is required, within 90 days. Request of the United States Postal Service for a Recommended Decision on Customized Market Mail Minor Classification Changes, March 14, 2003 (Request).

The proposal relaxes Standard Mail's longstanding restriction to rectangular pieces. It would allow certain non-rectangular or other nonstandard-shaped pieces to be sent as Standard Mail, subject to certain conditions. These include complying with packaging and other preparation requirements and shipping CMM directly to the destination delivery unit, thereby bypassing intermediate handlings.

The proposal entails minor changes to the Domestic Mail Classification Schedule (DMCS) and the addition of new footnotes to Standard Mail Rate Schedules 321A and 323A. The Service asserts that the changes would not have a significant effect on the Postal

Service's overall volumes, revenues and costs. *Id.* at 1.

*Rates, Surcharges, Permits*

Qualifying CMM pieces would pay the basic nonletter rate for Standard Mail Regular or Nonprofit subclass mail, plus the residual shape charge. CMM would not be eligible for the destination entry rate, the parcel barcode discount or for ancillary services. Ineligibility for the destination entry rate is based, in part, on the assumption that most CMM mailings would not meet the minimum volume threshold. No additional permit would be required.

*Contents; Availability*

The Request includes four attachments. Attachments A and B, respectively, present requested changes in the Domestic Mail Classification Schedule and Rate Schedules. Attachment C is an index of testimony. Attachment D addresses compliance with 39 CFR 3001.64 and 3001.69a. Contemporaneous submissions include the testimony of witnesses Ashe (USPS–T–1) and Hope (USPS–T–2); two library references; a request for expedition and establishment of settlement procedures; and a motion for waiver of several rules related to data and information. United States Postal Service Request for Expedition and Establishment of Settlement Procedures, March 14, 2003; Motion of United States Postal Service for Waiver, March 14, 2003 (Postal Service Motion).

The Request and other referenced material are on file in the Commission's docket room and are available for inspection during the Commission's regular business hours. This material can also be accessed via the Commission's Web site at *http://www.prc.gov.*[1]

## II. Grounds for Service's Designation of Docket No. MC2003–1 as a Minor Classification Change

Commission rules tie eligibility for treatment as an expedited minor classification change to satisfaction of three criteria. Specifically, the proposal (1) must not involve a change in any existing rate or fee; (2) must not impose any restriction in addition to pre-existing conditions of eligibility for entry of mail in an existing subclass or category of service, or for an existing rate element or worksharing discount; and (3) must not significantly increase or decrease the estimated institutional cost contribution of the affected subclass or category of service. 39 CFR 3001.69 through 3001.69c.

The Service asserts that its proposal meets all three criteria. It states that CMM will be subject to the existing Standard Mail Regular and Nonprofit nonletter basic category mail rates and the residual shape surcharge, and therefore will not entail new rates, fees or surcharges. It says eligibility standards will not be restricted, because for pieces less than ¼-inch in thickness, the proposed classification changes will make existing classifications more inclusive. For pieces greater than ¼-inch but less than or equal to ''-inch in thickness, the proposed classification changes will establish optional entry and handling procedures. In addition, the Service says CMM will not cause a significant impact on the contribution of Standard Mail toward institutional costs. Id. at 4. The Service also states that the requested amendments to the DMCS will further the general policies of the Postal Reorganization Act to plan, promote and provide adequate and efficient postal services at fair and reasonable rates and fees, and are consistent with applicable statutory criteria.

## III. Testimony

Witness Ashe (USPS–T–1). Witness Ashe describes the Service's proposal and related market research.[2] He identifies the anticipated customer base, reviews related postal operating plans for handling CMM, and addresses mailing requirements. Ashe also addresses why the proposal satisfies the criteria for consideration of a minor classification change. USPS–T–1 at 13. Ashe explains that existing DMCS 6020 and DMM C010.1.1 require, as a basic condition for mailability, that all mail pieces ¼-inch thick or less must be rectangular in shape. He notes that administrative rulings interpreting this requirement have held that mail pieces do not meet the definition of ''rectangular'' if they do not have four right-angle corners and four straight and regular edges, or if they have any holes or other voids with their dimensions. Id. at 1. Ashe characterizes CMM as a response to customer interest in using more creative advertising, and describes it as a ''niche'' piece whose characteristics and costs for preparation and mailing make it suitable only for targeted, carefully developed promotional messages to a selected audience. Id. at 4. He expects that CMM, at least for the foreseeable future, will remain a low-volume form of mail that generates proportionally small revenues, used in situations where a message of this sort makes financial and commercial sense. *Id.* at 6–7.

Witness Hope (USPS–T–2). Witness Hope provides an overview of classification changes; a description of how CMM fits into the current Standard Mail rate design and DMCS; and a review of the proposal's consistency with statutory classification criteria. She also provides a summary of benefits and explains why the proposal qualifies as a minor classification change. USPS–T–2 at 1. Witness Hope says no volume estimate is available, and anticipates that the CMM's overall impact on the affected subclasses will be minimal. She expects the effect on coverage of institutional costs to be negligible. Id. at 9.

## IV. Service's Position on Expedited Procedures and Settlement Potential

*A. Expedited Procedures*

The Service seeks expedition of this proceeding under §§ 21 and 69 of the Commission's rules of practice. It proposes that the Commission issue the requisite finding on the threshold question of eligibility as a minor classification change well before the end of the prescribed 28-day period. It also suggests that the Commission schedule a settlement conference as soon as possible following the deadline for intervention and make several adjustments in the area of discovery. These include shortening the time for discovery on the Service's case (should discovery be found necessary); limiting discovery to matters bearing directly on the proposed classification changes; and shortening time limits for responses to discovery requests and to related objections and motions. Request at 3. The Service also urges the Commission to require parties opting to request oral cross-examination to state not only ''the issues of material fact that require a hearing for resolution,'' as required under § 69b(h), but also to make a compelling case that oral cross-examination could not otherwise be obtained through written discovery.

Rationale for Expedition

The Service believes expedition is reasonable because the proposed classification changes are straightforward and of limited scope. Id. at 1. The proposal expands eligibility for certain types of non-rectangular shapes that are currently not mailable under existing provisions of the DMCS. These pieces would be limited to the basic nonletter rate categories in the Standard Regular and Nonprofit subclasses. No

[1] This is the case except for USPS–LR–1, which consists of physical examples of CMM. Facsimiles of these pieces appear in USPS–T–1, Exhibit USPS–1.

[2] The market research has been filed as USPS–LR–2.

new rates or surcharges are proposed for this matter. The proposal entails minor changes to the DMCS and the addition of new footnotes to Standard Mail Rate Schedules 321A and 323A. The changes would not have a significant effect on the Postal Service's overall volumes, revenues and costs. Id. at 1. Moreover, the Service asserts that there is a strong possibility of settlement, given indications from potential participants. *Id.* at 2. It also notes that because the proposal is likely to appeal to highly targeted mailings, it should have no adverse effect on other mailers or competitors. Ibid.

*B. Motion for Waiver*

The Postal Service seeks waiver, in whole or part, of several rules that call for detailed data and information. 39 CFR 3001.64(b)(3); 39 CFR 3001.64(d) and 39 CFR 3001.69a(a)(3).[3] In general, it asserts that waivers are appropriate, in the public interest, and not prejudicial to the interests of any participant because the classification changes in issue are minor in nature and will not have a substantial effect on the volume, revenue and cost estimates, or on the relationships of mail. Moreover, the Service says production of the information would be unduly burdensome. Motion of United States Postal Service for Waiver, (Postal Service Waiver Motion), March 14, 2003, at 1 and 3.

Rule 64(b)(3)—information on the economic substitutability between various classes and subclasses of mail, including a description of cross-elasticity of demand between various classes of mail.

The Service notes that economic substitutability of demand would not be expected to change under this proposal, particularly since potential users would only be able to enter CMM into the basic nonletter category tier in Standard Mail. Accordingly, it asserts the data this section seeks are not necessary or useful in considering the Service's proposal, and waiver will not impair the ability of the Commission or any participant to evaluate the Request. Postal Service Waiver Motion at 2.

Rule 64(d)—effects on cost assignments, total costs, and total revenues and 69a(a)(3)—a detailed estimate of the overall impact of the requested change in mail classification on postal costs and revenues, mail users, and competitors of the Postal Service.

The Service invokes the explanations provided in the testimony of its two witnesses as to why the proposal will not result in significant changes to postal cost and revenue relationships. Id. at 3. It says the cost of conducting detailed analyses is not justified by the limited scope of the proposal and the small number of users likely to avail themselves of these new classification provisions. Ibid. It also says that given the expected insignificant near-term effect on costs and revenue, waiver of section 64(d) will not impair the ability of the Commission or prospective participants to evaluate the Service's presentation. Ibid.

**V. Initial Procedural Steps**

Although some aspects of the Service's proposal necessarily await an opportunity for interested parties to assess the filing, the Commission agrees with the Service that several steps can be taken now to expedite this case.

*Dates for Intervention, Statements, and Responses*

The Commission prefers that those wishing to be heard in this matter submit a notice of intervention on or before April 3, 2003. Notices should indicate whether participation will be on a full or limited basis and state whether a hearing is requested. The Commission also prefers that responses to the Service's Request for Expedition and to the Postal Service Waiver Motion be filed no later than April 3, 2003.[4]

*Settlement Matters and Prehearing Conference*

Subject to reconsideration if responses from participants so warrant, the Commission authorizes settlement proceedings in this case. It appoints Postal Service counsel to serve as settlement coordinator and to schedule settlement conferences as deemed appropriate. A settlement conference held before the prehearing conference would facilitate prompt action on the Request. Participants and the Commission are to be provided reasonable notice of such conferences. The Postal Service is also directed to file periodic status reports with the Commission. A prehearing conference is scheduled for April 9, 2003, at 10 a.m. in the Commission's hearing room. Participants should be prepared to discuss matters pertinent to the Service's proposal, especially the need for a hearing, and the request for expedition, including the Service's suggestions related to discovery.

*Representation of the General Public*

In conformance with 39 U.S.C. 3624(a), the Commission designates Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, when requested, shall provide their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. Service of documents on the OCA shall conform to Commission rules.

*Ordering Paragraphs*

It is ordered:

1. The Commission will sit *en banc* in this proceeding.
2. Participants are encouraged to file notices of intervention, respond to the Request for Expedition and Establishment of Settlement Procedures, respond to the Postal Service's Motion for Waiver, and submit a request for a hearing no later than April 3, 2003.
3. Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.
4. The Commission authorizes settlement discussions in this proceeding.
5. Postal Service counsel is appointed to act as settlement coordinator in this proceeding, subject to reconsideration.
6. Settlement conferences are authorized to be held at time, dates and places arranged by the settlement coordinator.
7. The settlement coordinator shall file periodic status reports with the Commission.
8. A prehearing conference is scheduled for April 9, 2003, at 10 a.m. in the Commission's hearing room.
9. The Secretary shall cause this notice and order to be published in the **Federal Register**.

By the Commission.

Issued: March 19, 2003.

**Steven W. Williams,**

*Secretary.*

[FR Doc. 03–7022 Filed 3–24–03; 8:45 am]

BILLING CODE 7710–FW–P

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## POSTAL RATE COMMISSION

**[Order No. 1364]**

## Petition Seeking a Proceeding—Additional Comments

**AGENCY:** Postal Rate Commission.

[3] The Service seeks partial waiver for rule 69a(a)(3).

[4] Interventions as of right, requests for a hearing and responses to the Service's request for expedition will be accepted until the April 9, 2003, prehearing conference.

**ACTION:** Notice and order allowing comments.

**SUMMARY:** This document informs the public that the Postal Service has filed a report on an internal review of certain nonpostal offerings. This report is relevant to a Consumer Action petition for a rulemaking. The document also reviews initial comments and authorizes a further round of comments.

**DATES:** Submit comments by April 18, 2003.

**ADDRESSES:** Submit responsive documents electronically via the Commission's Filing Online system, which may be accessed at *http://www.prc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharmfan, General Counsel, 202–789–6818.

**SUPPLEMENTARY INFORMATION:**

## Regulatory History

67 FR 71843 (December 3, 2002).

## Background

In Order No. 1353, issued November 21, 2002, the Commission gave notice of a petition filed by Consumer Action requesting that proceedings be instituted to review the jurisdictional status of 14 specified services and to establish rules to require a full accounting of all non-jurisdictional domestic services. The order noted that while the Commission was considering the petition, the Chairman received a letter from the Chairman of the Board of Governors indicating that the Postal Service was conducting an internal review of its ''non-postal service offerings.'' [1] Chairman Rider expressed the hope that, prior to addressing the request for a formal proceeding, the Commission would afford the Postal Service an opportunity to comment on the issues and further that it first be able to complete its internal review.[2] Among other things, Chairman Rider indicated that ''[t]he results of this review will also bear substantially on the representations in the petition.'' [3] It was anticipated that this review would be completed in early January 2003.

Concluding that a brief deferral would not prejudice the petitioner, the Commission deferred action on the petition pending completion of the Postal Service's internal review. Accordingly, the Commission set January 30, 2003 as the due date for comments from interested persons to advise the Commission on the most appropriate way to proceed. PRC Order No. 1353, November 21, 2002, at 3.

## Summary of Initial Comments

Six sets of comments were received. Each is identified below, along with a brief summary of that commenter's recommendation of how the Commission should proceed.

- Association for Postal Commerce (PostCom)—PostCom takes no position on the Commission's jurisdiction over the 14 services identified in the petition, but urges the Commission to initiate a rulemaking to examine establishing accounting conventions applicable to Postal Service offerings that are not subject to regulated rates.[4]
- Computer & Communications Industry Association (CCIA)—CCIA endorses the petition and urges the Commission to initiate the proceeding requested.[5]
- Council for Citizens Against Government Waste (CCAGW)—CCAGW endorses the petition and urges the Commission to initiate the proceeding requested.[6]
- Pitney Bowes, Inc.—Pitney Bowes, while expressing some general concerns, noted that at the time its comments were filed no person had an opportunity to review the results of the Postal Service's internal evaluation. Thus, Pitney Bowes requests that the Commission provide interested persons an opportunity to comment on ''the appropriate scope and manner of proceeding'' after having time to consider the results of the Postal Service's internal review.[7]
- Washington Legal Foundation (WLF)—WLF supports the petition and urges the Commission to act favorably on it.[8] Among other things, WLF also requests that interested persons be afforded an opportunity to comment on the results of the Postal Service's internal review. *Id.* at 5.
- Postal Service—The Postal Service opposes the petition and requests that the Commission decline to adopt the proposals contained in the petition and accompanying joint letter.[9]

## Postal Service Report

On March 10, 2003, the Postal Service submitted a report that generally describes the results of its internal review.[10] The report briefly summarizes the business review process, including the procedures used to monitor the various services offered by the Postal Service. In addition, the report discusses each of the services identified in the Petition. The report and comments are available on the Commission's Web site, *http://www.prc.gov.*[11]

## Additional Round of Comments

The requests by Pitney Bowes and WLF that interested persons be afforded an opportunity to comment on the report are well taken. The report provides information not available to commenters at the time initial comments were filed. Providing interested persons an opportunity to comment on the report will assist the record. Comments on the report are due April 18, 2003. In addition to addressing the substantive aspects of the report, interested persons may also respond to positions and arguments contained in the initial comments of any commenter.

## Ordering Paragraphs

*It is ordered:*

1. Notice is hereby given that interested persons may submit comments, as more fully described in the body of this order, concerning the Postal Service's ''Report on Nonpostal Initiatives,'' filed March 10, 2003.

2. Comments from interested persons authorized by this order are due no later than April 18, 2003.

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[1] Letter to the Honorable George A. Omas from the Honorable Robert F. Rider, Chairman of the Board of Governors, November 14, 2002, at 1 (Rider Letter). Effective January 2003, S. David Fineman succeeded Mr. Rider as Chairman of the Board of Governors.

[2] Rider Letter at 2.

[3] Id. at 1.

[4] Comments of PostCom, January 30, 2003, at 1–2.

[5] Comments of the Computer & Communications Industry Association on the Motion of the Office of the Consumer Advocate to Request that the Commission Institute a Proceeding to Consider the Postal/Nonpostal Character of Specified Services and the Establishment of Rules to Require a Full Accounting of the Costs and Revenues of Nonpostal Services, January 28, 2003, at 1 and 9.

[6] Comments of the Council for Citizens Against Government Waste on the Motion of the Office of the Consumer Advocate to Request that the Commission Institute a Proceeding to Consider the Postal/Nonpostal Character of Specified Services and the Establishment of Rules to Require a Full Accounting of the Costs and Revenues of Nonpostal Services, January 30, 2003, at 1.

[7] Comments of Pitney Bowes, Inc., January 30, 2003, at 2.

[8] WLF letter addressed to the Commission's Secretary, Steven W. Williams, January 30, 2003, at 1.

[9] Comments of United States Postal Service on Consumer Action Petition, January 30, 2003, at 45; see also *id.* at 20 *et seq.* Concurrently with the filing of its Comments, the Postal Service requested leave to file a report summarizing the internal review referenced by Chairman Rider. United States Postal Service Request for Leave to File Report, January 30, 2003. At that time, the Postal Service anticipated filing the report in early February. The request to file the report is granted.

[10] *See* Notice of United States Postal Service of Filing Report, March 10, 2003. Attached to the notice is the ''Report on Nonpostal Initiatives.''

[11] On the Commission's homepage, this material can be accessed by clicking on ''Contents'' and then either on ''Docketed Cases & Matters,'' or on ''Pending Cases & Matters.'' It can be found under ''Other Matters,'' where it is listed separately.

3. The Postal Service's request, dated January 30, 2003, for leave to file the report is granted.

4. The Secretary shall arrange for publication of this notice in the **Federal Register.**

By the Commission.

Issued: March 19, 2003.

**Steven W. Williams,**

*Secretary.*

[FR Doc. 03–6999 Filed 3–24–03; 8:45 am]

BILLING CODE 7710–FW–P

## UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

### Sunshine Act Meeting

**TIMES AND DATES:** 1 p.m., Monday, March 31, 2003; 8:30 a.m., Tuesday, April 1, 2003.

**PLACE:** Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

**STATUS:** March 31—1 p.m. (Closed); April 1—8:30 a.m. (Open).

**MATTERS TO BE CONSIDERED:**

**Monday, March 31—1 p.m. (Closed)**

1. Strategic Planning.
2. Amendment to Board of Governors Bylaws.
3. Financial Performance.
4. Rate Case Planning.
5. Capital Investment for Ventilation and Filtration System (VFS) for Mail Processing Equipment.
6. Unresolved Audit Recommendation.
7. Personal Matters and Compensation Issues.

**Tuesday, April 1—8:30 a.m. (Open)**

1. Minutes of the Previous Meeting, March 3–4, 2003.
2. Remarks of the Postmaster General and CEO.
3. Quarterly Report on Service Performance.
4. Quarterly Report on Financial Performance.
5. Fiscal Year 2003 Supplemental Appropriation Request for Emergency Preparedness Costs.
6. Capital Investments.
   a. Self Service Platform.
   b. Advanced Funding Request for the James A. Farley Processing and Distribution Center Sale Transition and Redevelopment.
7. Tentative Agenda for the May 5–6, 2003, meeting in Chicago, Illinois.

**CONTACT PERSON FOR MORE INFORMATION:** William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

**William T. Johnstone,**

*Secretary.*

[FR Doc. 03–7257 Filed 3–21–03; 2:28 pm]

BILLING CODE 7710–12–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 33–8207, File No. S7–05–03]**

### Securities Uniformity; Annual Conference on Uniformity of Securities Laws

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of conference; request for comments.

**SUMMARY:** The Commission and the North American Securities Administrators Association, Inc. are requesting comments on the proposed agenda for their annual conference to be held on April 7, 2003. The purpose of the conference is to further the objectives of section 19(d) of the Securities Act of 1933, principally to increase cooperation between the Commission and state securities regulatory authorities in order to maximize the efficiency and effectiveness of securities regulation.

**DATES:** The conference will be held on April 7, 2003. We must receive comments by April 3, 2003 in order to consider them for discussion at the conference.

**ADDRESSES:** To help us process and review your comments more efficiently, comments should be sent by one method only. Please send three copies of written comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments may also be sent electronically to the following e-mail address: *rule-comments@sec.gov*. Comment letters should refer to File No. S7–05–03; if e-mail is used, please include this file number on the subject line. Anyone can inspect and copy the comment letters in our Public Reference Room, 450 5th Street, NW., Washington, DC 20549–0102. All electronic comment letters will be posted on the Commission's internet Web site (*http://www.sec.gov*).[1]

[1] We do not edit personal identifying information, such as names and e-mail addresses, from electronic submissions. Therefore, you should submit only information you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Marva Simpson, Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0310, (202) 942–2950.

**SUPPLEMENTARY INFORMATION:**

### I. Discussion

The Federal government and the states have jointly regulated securities offerings and the securities industry in the United States since the adoption of the first federal securities statute, the Securities Act of 1933 (the ''Securities Act'').[2] Companies trying to raise capital in our securities markets, as well as participants in the secondary trading markets, must comply with all applicable federal and state securities laws and regulations. Parties involved in the securities markets have long recognized the need to increase cooperation between the federal and state regulatory systems to facilitate capital formation while retaining necessary investor protections.

Congress endorsed more uniformity in securities regulation with the enactment of section 19(d) of the Securities Act[3] in the Small Business Investment Incentive Act of 1980.[4] Section 19(d) authorizes the Commission to cooperate with an association of state securities regulators that can assist in achieving such uniformity. The North American Securities Administrators Association (''NASAA'') fulfills that function.[5] Section 19(d) requires the Commission to cooperate with NASAA to:

- maximize the effectiveness of regulation;
- maximize uniformity in federal and state regulatory standards;
- minimize interference with the capital formation;
- reduce the cost and paperwork burdens of raising investment capital, particularly by small business; and
- reduce administration costs of the government programs involved.

The Commission is required under Section 19(d) to conduct an annual conference to establish ways to achieve these goals.

[2] 15 U.S.C. 77a *et seq.*

[3] 15 U.S.C. 77s(d). Section 19(d) was enacted originally as section 19(c) of the Securities Act but was renumbered by section 108 of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (July 30, 2002).

[4] Pub. L. 96–477, 94 Stat. 2275 (Oct. 21, 1980).

[5] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and 12 Canadian provinces and territories.

## II. 2003 Conference

The Commission and NASAA are planning the 2003 Conference on Federal-State Securities Regulation, scheduled be held on April 7, 2003 in Washington, DC. The 2003 conference will be the twentieth such conference to be held pursuant to the directive in section 19(d) of the Securities Act. At the conference, Commission and NASAA representatives will divide into working groups in the areas of corporation finance, market regulation and oversight, investment management, investor education, and enforcement. Each group will discuss methods to enhance cooperation in securities matters and improve the efficiency and effectiveness of federal and state securities regulation. Generally, to encourage open and frank discussion, only Commission and NASAA representatives may attend the conference. Each working group, however, in its discretion may invite specific self-regulatory organizations (''SROs'') to attend and participate in certain sessions.

The Commission and NASAA are preparing the conference agenda. We invite the public, securities associations, SROs, agencies, and private organizations to participate by submitting written comments on the issues set forth below. In addition, we request comment on other appropriate subjects. We will make the comments available to all conference attendees.

## III. Tentative Agenda and Request for Comments

The tentative agenda for the conference includes the topics discussed below in the areas of corporation finance, market regulation, investment management, investor education and assistance, and enforcement.

*(1) Corporation Finance Issues*

A. Commission Rules Implementing the Sarbanes-Oxley Act and other Recent Rulemaking; Impact on Smaller Companies

In the wake of a series of corporate and accounting scandals, President George W. Bush signed into law the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act'') on July 30, 2002.[6] Among other things, the Act directs the Commission to promulgate rules and regulations that will improve the quality of corporate disclosure and financial reporting, strengthen the independence of auditing firms, and increase the responsibility of management for corporate disclosures and financial statements.

The Sarbanes-Oxley Act specified that many of the new rules had to be effective within 180 days of enactment. We have already issued a number of final rules under the Sarbanes-Oxley Act and intend to issue the remaining final rules within the mandated time frames.

The final rules relevant to the 19(d) conference include the following:[7]

- Release 34–46421—August 27, 2002—Ownership Reports and Trading by Officers, Directors, and Principal Security Holders.
- Release 33–8124—August 28, 2002—Certification of Disclosure in Companies' Quarterly and Annual Reports.
- Release No. 33–8176—January 22, 2003—Conditions for Use of Non-GAAP Financial Measures.
- Release No. 34–47225—January 22, 2003—Insider Trades During Pension Fund Blackout Periods.
- Release No. 33–8177—January 23, 2003—Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002.
- Release No. 33–8182—January 28, 2003—Disclosure in Management's Discussion and Analysis about Off-Balance Sheet Arrangements and Aggregate Contractual Obligations.
- Release No. 33–8183—January 28, 2003—Strengthening the Commission's Requirements Regarding Auditor Independence.
- Release 33–8185—January 28, 2003—Implementation of Standards of Professional Conduct for Attorneys.

Smaller companies have expressed concerns with respect to several of the Commission's recent proposed and final rules, including:

- The ability of smaller companies to meet the evaluation and reporting requirements for a company's internal controls and procedures for financial reporting and its disclosure controls and procedures with respect to annual and quarterly reports.
- The requirement relating to including an audit committee financial expert on a company's audit committee, given the difficulty small companies have in finding qualified board members.
- The increase in Form 8–K filings that would result from adoption of the Commission's proposed release on Form 8–K disclosure requirements, which would add 11 new items to the current list of items requiring the filing of a Form 8–K, accelerate the filing requirement to two days, move two disclosure items currently required to be included in companies' annual and quarterly reports to Form 8–K and amend several of the existing Form 8–K disclosure items.[8]
- The additional audit costs that may result from adoption of the Commission's proposed rules on disclosure of critical accounting policies.[9]
- The additional costs and obligations imposed under the Commission's new rule on auditor independence and proposed rule on standards relating to listed company audit committees.[10]

Since many of these concerns result from recent actions, their cumulative effects on smaller public companies are difficult to assess. We expect the agenda for the conference to include a discussion of the impact of the Sarbanes-Oxley Act and other recent corporate governance and disclosure reforms on smaller public companies and whether accommodations are necessary or desirable. Conferees are encouraged to discuss initiatives aimed at improving the financial reporting and disclosure system. The Division may take the information developed in these discussions into account in determining whether and how to consider the impact of the Sarbanes-Oxley Act on smaller companies.

B. Transactions Involving ''Qualified Purchasers''

Under section 18 of the Securities Act, transactions involving ''qualified purchasers'' are subject to registration under the federal securities laws only and not under state securities laws.[11] The term ''qualified purchaser'' is not defined in the statute and must be defined by the Commission. On December 19, 2001, we published a release proposing a definition for the term ''qualified purchaser.'' The release proposed to add the definition as an amendment to Rule 146 under the Securities Act.[12] As proposed, ''qualified purchaser'' would be defined to have the same meaning as the term ''accredited investor'' under Rule 501 of Regulation D.[13] If adopted, securities

[6] Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (July 30, 2002).

[7] The Commission also adopted rules that would accelerate the periodic reporting filing dates and require disclosure concerning Web site access to reports. Release No. 33–8128 (Sept. 5, 2002) [67 FR 58480].

[8] Release No. 33–8106 (June 17, 2002) [67 FR 42914].

[9] Release No. 33–8098 (May 10, 2002) [67 FR 35620].

[10] Release Nos. 34–47137 (January 8, 2003) [68 FR 2638], 33–8183 (January 28, 2003) [68 FR 6006].

[11] 15 U.S.C. 77r.

[12] Release No. 33–8041 (Dec. 19, 2001) [66 FR 66839].

[13] 17 CFR 230.501.

offered or sold to a qualified purchaser would not be subject to state registration requirements but only to federal requirements. The public comment period on the proposal closed on February 25, 2002. The Commission staff is in the process of reviewing all the comments. The agenda for the meeting will include a discussion of the proposal by the participants.

C. Regulation A

The agenda for the meeting will include consideration of possible revisions to the Commission's Regulation A exemption from the registration requirements of the Securities Act.[14] As presently constituted, Regulation A permits the offer and sale of up to $5 million worth of securities in a 12-month period. An offering circular must be prepared for delivery before sale. Offering materials are subject to Commission staff review. Regulation A permits the use of unaudited financial statements. However, because the offering must be registered in most cases under state laws, issuers may be required to provide audited financial statements. Further, the current limit on the amount of securities that may be offered may be too low to provide professional underwriting assistance in these offerings. The conferees will consider possible changes to make the Regulation A exemption more useful to small businesses, consistent with investor protection.

Regulation A also permits the offering of securities in the manner of ''testing the waters'' to see whether or not any potential offering of an issuer's securities would be favorably received by the investing public. The provision has not been widely used. The conferees will discuss the provision with a view to determining whether greater federal/state uniformity is an issue and can be achieved or whether other matters have caused the apparent lack of attractiveness in this provision.

D. Form D

We adopted Regulation D in 1982 as the result of a cooperative effort between NASAA and the Commission. Regulation D was intended to facilitate uniformity for limited offering exemptions at the state and federal level. Form D was adopted in conjunction with Regulation D. Form D serves as a notice of sales for use in exempt offerings under Regulation D and section 4(6) of the Securities Act at the federal level. Rule 503 requires issuers seeking an exemption under Regulation D to file Form D with the Commission within 15 days after the first sale.[15] Issuers must also file a Form D for sales of securities in states that have adopted the Uniform Limited Offering Exemption (''ULOE'')[16] and Form D. Currently, the Commission and some states receive paper filings. With the advent of electronic filing and advances in technology, it may be more timely and cost-effective to file the Form D, at least at the federal level, using the Commission's EDGAR system. The conferees will discuss simplifying Form D and filing the form electronically.

E. Securities of Blank Check Companies

A blank check company is a company in the development stage with no specific business plan or purpose, or a company that indicates that its plan is to engage in a merger or acquisition with an unidentified company or companies.[17] In 1990, the U.S. Congress found that offerings by these kinds of companies were common vehicles for fraud and manipulation. We have adopted several rules, as Congress directed, to deter fraud in connection with these offerings.[18] The group will discuss matters of mutual concern relating to the offerings of securities by blank check companies, including recent developments and possible new rules and revisions of existing rules.

*(2) Market Regulation Issues*

A. Description of Bank Dealer Exceptions After the Gramm-Leach-Bliley Act[19]

The participants will discuss the Commission's rules pertaining to banks' dealer activities. We adopted amendments to the bank dealer rules on February 6, 2003.[20] These rules provide banks with a new exemption for their securities lending transactions. They also implement the specific exceptions for banks from the definition of ''dealer'' that were enacted as a part of the Gramm-Leach-Bliley Act (''GLBA'') in late 1999. Among other things, the GLBA provided for functional regulation of securities activities by eliminating the complete exception for banks from the definitions of ''broker'' and ''dealer'' and replacing them with specific transaction and activity-based exceptions.

B. Possible Revisions to Form BD

Under the regulatory scheme of the Securities Exchange Act of 1934[21] (the ''Exchange Act''), broker-dealers must register with the Commission, as well as with at least one statutory SRO. Broker-dealers apply for registration by filing Form BD (17 CFR 249.501), the uniform application for broker-dealer registration. The state securities regulators also use this form. Form BD requires the applicant filing the form to provide certain information concerning the nature of its business and the background of its principals, controlling persons, and employees. Form BD[22] is designed to permit regulators to determine whether the applicant meets the statutory requirements to engage in the securities business.

We amended Form BD on July 2, 1999 to support electronic filing in the Internet-based Central Registration Depository system.[23] Since the July 1999 amendments, the GLBA, the Commodity Futures Modernization Act of 2000, and, more recently, the Sarbanes-Oxley Act have all been enacted. Among other things, the Sarbanes-Oxley Act expands the definition of ''statutory disqualification'' under the Exchange Act.[24] These and other developments may indicate the need for possible further amendments to Form BD.

C. Research Analyst Conflicts of Interest

We have taken a number of actions in the past year to address analyst conflicts of interest. On February 6, 2003, we adopted Regulation Analyst Certification, which requires that analysts certify that the views expressed in research reports accurately reflect their personal views and that research reports disclose whether analysts received compensation for their recommendations or views.[25] On May 10, 2002, we approved rule changes by the National Association of Securities Dealers (''NASD'') and the New York Stock Exchange (''NYSE'') that establish standards governing broker-dealer communications with the public to address analyst conflicts of interest.[26] Late last year, we released for comment additional rule amendments filed by the

[14] 17 CFR 230.251 through 263.

[15] 17 CFR 230.503.

[16] The ULOE provides a uniform exemption from state registration for offerings complying with Regulation D.

[17] Securities Act section 7(b)(3), 15 U.S.C. 77g(b)(3).

[18] 17 CFR 230.419 and 17 CFR 240.15g–8.

[19] Pub. L. 106–102, 113 Stat. 1338 (1999).

[20] Release No. 34–47364 (Feb. 13, 2003) [68 FR 8685].

[21] 15 U.S.C. 78a *et seq.*

[22] 17 CFR 249.501.

[23] Release No. 34–41594 (July 2, 1999) [64 FR 37586].

[24] 15 U.S.C. 78c(39).

[25] Release No. 33–8193 (Feb. 20, 2003) [68 FR 9482].

[26] Release No. 34–45908 (May 10, 2002) [67 FR 34968].

NYSE and NASD that would require a compensation committee to review and approve analyst compensation; prohibit firms from issuing reports by a research analyst who participated in solicitation meetings with prospective investment-banking clients; require notification to customers when a member or member organization terminates research coverage of a subject company and require that the final report include a final recommendation or rating; and amend the definition of ''public appearance'' to include research analysts' making a recommendation in a newspaper article or similar public medium.

We are working with NASAA and its members, as well as the NYSE, NASD, and New York State Attorney General, on a joint formal inquiry into market practices concerning research analysts and the conflicts that can arise from the relationships between research and investment banking. On December 20, 2002, the Commission announced an agreement in principle that, if approved by the Commission, would result in a settlement with the nation's largest investment banking firms to address issues of conflicts of interest with respect to their brokerage departments, and would conclude the joint inquiry.[27]

*D. Shorter Settlement Cycles, Straight-Through Processing, and Immobilization and Dematerialization of Stock Certificates*

Over the past year, the securities industry has undertaken an initiative to achieve several straight-through processing goals. In order to reach these goals, the industry, through the Securities Industry Association (''SIA''), has proposed that we promulgate a number of regulatory changes. One of the more controversial of the proposed changes is adding rules to discourage the issuance and use of physical certificates. According to an SIA study, the costs of processing physical securities and the risks inherent with the use of physical securities are significant to the industry and ultimately their customers. Therefore, the industry is proposing that new securities be issued in book-entry form only. Although such a requirement could be imposed at the federal level, another possibility would be to implement a book-entry-only standard through exchange listing standards and issuer action. One issue is that several states' corporate laws still require that an issuer make physical securities available to shareholders who request them. The Commission staff hopes to explore with NASAA ways in which to discourage the issuance and use of physical certificates, restrictions imposed by certain state corporate laws, and exchange listing standards regarding the issuance of physical certificates.

E. IPO Underwriting and Allocation Process

The initial public offering underwriting process has come under a lot of scrutiny lately—especially with regard to perceived abuses in the pricing and allocation of IPO shares. We are currently reviewing industry practices regarding the roles of issuers and underwriters in the price setting and the allocation of IPO shares as well as the offering process in general. Moreover, the NYSE and NASD have convened a panel of business and academic leaders to conduct a broad review of the IPO process and to recommend ways to address the problems so as to improve the underwriting process and restore investor confidence. The panel hopes to report by the end of March. The Commission has also brought at least one enforcement action, the Robertson Stephens case, relating to underwriting activities in connection with a number of IPOs.[28] In addition, the NASD recently sought comment from its members on proposed new rules regarding the regulation of IPO allocations and distributions.[29] According to the NASD, the rules will better ensure that members avoid unacceptable conduct when they engage in the allocation and distribution of IPOs.

F. Possible Changes to SRO Rules

1. *Branch Office Definition.* The NYSE recently filed a proposed rule change, SR–NYSE–2002–34, which proposes to amend NYSE Rule 342, Offices—Approval, Supervision, and Control, to provide for a new definition of the term ''branch office.'' The proposed amendment to the rule would limit the requirement to register certain business locations as ''branch offices—to account for advances in technology used to conduct and monitor business and changes in the structure of broker-dealers and in the lifestyles and work habits of broker-dealers. On December 4, 2002, the Commission published the proposed rule change for public comment.[30]

2. CRD—Expungement. The NASD recently filed a proposed rule change, SR–NASD–2002–168, which proposes to establish procedures for expunging customer dispute information from the Central Registration Depository system. The proposed rule would require all arbitral directives to expunge customer dispute information from the CRD system to be confirmed or ordered by a court of competent jurisdiction. The proposed rule also would require member firms and associated persons seeking expungement to name the NASD as an additional party in any judicial proceeding seeking expungement relief or confirming an arbitration award containing expungement relief. The proposed rule would state that the NASD will participate in such judicial proceedings and will oppose expunging dispute information in the proceedings unless specific findings have been made that the subject matter of the claim or the information in the CRD system: (1) Is without factual basis (*i.e.*, is factually impossible or clearly erroneous); (2) fails to state a claim upon which relief can be granted; (3) is frivolous; or (4) is defamatory in nature. The proposed rule would also permit member firms and associated persons to ask the NASD to waive the requirement to name the NASD as a party on the basis that the expungement order meets at least one of the standards for expungement articulated in the proposed rule. The Division of Market Regulation is preparing to recommend release of the proposal for public comment and anticipates extensive public commentary.

3. NYSE and NASD Proposals to Amend Rules Relating to Supervisory Control Over Customer Accounts. Adequate supervisory systems are integral to investor protection and to the integrity of the securities market. Operational and sales practice abuses can stem from ineffective supervisory control procedures. The recent Gruttadauria case,[31] which involved the alleged misappropriation of customer funds, highlighted the ongoing problem of operational and sales practice abuses at firms and the importance of firms effectively monitoring their employees.

The NYSE and NASD have submitted proposals to amend their rules relating to supervisory control over customer accounts.[32] Specifically, the proposed rules would: (1) Require members to develop general and specific

[27] Securities and Exchange Commission, Press Release 2002–179, December 20, 2002.

[28] Litigation Release No. 17923 (Jan. 9, 2003).

[29] NASD Notice 02–55, ''NASD Requests Comments on Proposed New Rule 2712 and Amendments to Rule 2710,'' August 2002.

[30] Release No. 34–46888 (Dec. 4, 2002) [67 FR 72257].

[31] Litigation Release No. 17590 (June 27, 2002).

[32] NYSE 2002–36, Release No. 34–46858 (Nov. 20, 2002) [67 FR 72661]; NASD 2002–162, Release No. 34–46859 (Nov. 20, 2002) [67 FR 70990].

supervisory control procedures that independently test, verify, and modify, where necessary, the members' supervisory procedures; (2) require that office inspections be conducted by independent persons and include, at a minimum, the testing and verification of certain supervisory procedures; (3) expand upon a member's supervisory and recordkeeping requirements with respect to changes in customer account name or designation in connection with order executions; and (4) clarify the time limit on time-and-price discretionary authority. The comment period expired on January 17, 2003. We have received numerous comment letters, which Commission staff and SRO staff are currently reviewing.

G. Amendments to Broker-Dealer Recordkeeping Rules

The participants will discuss the Commission's recent amendments to its broker-dealer recordkeeping rules, Exchange Act Rules 17a–3 and 17a–4, in light of certain interpretive questions regarding the amendments.[33]

H. Examination Issues

State and federal regulators also will discuss various examination-related issues of mutual interest, including examination priorities, summits and examinations.

*(3) Investment Management Issues*

A. Electronic Filing and the Investment Adviser Registration Depository (''IARD'')

Investment advisers applying for registration, or already registered, with the Commission file their registration statements and amendments electronically through the IARD. Most states also permit investment advisers and investment adviser representatives to register by filing through the IARD. The agenda for the conference is expected to include a discussion of the operations and finances of the IARD during 2002. The participants also are expected to discuss issues related to future plans for the IARD and for the public disclosure website for investment adviser information, the IAPD.

B. Current Issues and Rulemaking Initiatives

The participants are expected to discuss recent rulemaking initiatives under the Investment Advisers Act of 1940[34] that deal with enhanced public disclosure of proxy votes, compliance issues, updated custody requirements, and advisers giving investment advice over the Internet. Developments in the model state law area and competency tests for investment adviser representatives also may be discussed. The participants may consider the continuing education needs of investment advisers and discuss approaches for enhancing an adviser's understanding of relevant state and federal regulatory responsibilities.

C. Examination of Advisers

The agenda for the meeting will include a discussion of examination protocols used by states and the Commission as well as the sharing of information among regulators. Recent enforcement matters of particular relevance also may be discussed.

*(4) Investor Education and Assistance Issues*

The Commission and NASAA currently sponsor a number of programs to educate investors on how to invest wisely and to protect themselves from fraud and abuse. The states and NASAA have a long-standing commitment to investor education, and we intend to complement those efforts to the greatest extent possible. During the investor education working group session, participants at the conference are expected to discuss the following investor education initiatives and potential joint projects:

A. Facts on Saving and Investing Campaign

Five years ago, in the spring of 1998, the Commission and NASAA in conjunction with the Council of Securities Regulators of the Americas (''COSRA'') launched the Facts on Saving and Investing Campaign. Led primarily by individual states and Canadian provincial securities regulators, the campaign is an ongoing, grassroots effort to educate individuals about saving, investing, and avoiding financial fraud. During the working group session, participants will discuss this year's campaign.

B. Youth Initiatives

During the working group session, NASAA will brief the Commission staff on the progress of ''Financial Literacy 2010,'' an unprecedented financial literacy program launched in the spring of 1998 by NASAA, the NASD, and the Investor Protection Trust. FL2010 aims to encourage—and make it easier for—teachers in every state to teach the basics on saving and investing to high school students. Representatives from individual states and the Commission also will share information concerning other financial literacy efforts targeted toward youth.

C. Education on Troubling Trends and ''Top 10'' Scams

From time to time, NASAA publishes a list of the top 10 investment scams that state securities regulators have been combating. This list not only raises public awareness about potential investment scams, but also helps to shape investor education initiatives.

Representatives from NASAA and the Commission will discuss troubling trends they have noted recently and will explore ways in which NASAA and the Commission can work together to warn the investing public about problematic products.

D. Online Investor Protection

NASAA will discuss ongoing state initiatives to enhance investor protection online, including the status of the Investing Online Resource Center. Similarly, the Commission staff will discuss its continuing efforts to educate investors on how to use the Internet to invest wisely.

E. Senior Educational Outreach Efforts

NASAA members and the Commission staff will discuss ongoing educational programs aimed at educating seniors. Since seniors are a large segment of the population that are targeted for scams, many individual states have set up educational outreach programs aimed toward seniors. Representatives from individual states will share information concerning these outreach programs.

F. New Programs on Investor Education

Participants in the working group session will brainstorm ideas for new investor education programs, including joint NASAA and Commission initiatives.

G. Investor Education Resources

Participants will discuss the most efficient and effective ways to provide educational resources to individuals at both a national and a grassroots level.

*(5) Enforcement Issues*

In addition to the above topics, state and federal regulators will talk about various enforcement-related issues of mutual interest. As in the past, it is anticipated that representatives of the SROs and the Justice Department will participate in this meeting. Included on the agenda for their session will be identification of the current enforcement priorities of the organizations present and a discussion of the more important investment scams

[33] 17 CFR 240.17a–3, and 240.17a–4.

[34] 15 U.S.C. 80b–1 *et seq.*

being uncovered in different parts of the country. Ways to further enhance the level of communication and coordination in the enforcement context will also be covered. State and federal regulators may discuss various other enforcement-related issues of mutual interest.

*(6) General*

The participants may also discuss matters that are applicable to all, or to a number, of the areas noted above. These include EDGAR (the Commission's electronic disclosure system), rulemaking procedures, training and education of staff examiners and analysts, and information sharing.

Discussions may also cover the new 2002 version of the Uniform Securities Act (''USA 2002''), which recently has been finalized by a committee of the National Conference of Commissioners on Uniform State Laws. The USA 2002 is a model uniform state securities law statute. The new version modernizes the Uniform Securities Act of 1956 and the Revised Uniform Securities Act of 1985. The USA 2002 updates the law to reflect many changes including, for example, the National Securities Market Improvement Act of 1996[35], technology advances, and internationalization of securities trading. In January, 2003, NASAA endorsed the USA 2002.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also discuss or comment on other proposals that would enhance uniformity in the existing scheme of state and federal securities regulation, while helping to maintain high standards of investor protection.

By the Commission.

Dated: March 17, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–6983 Filed 3–24–03; 8:45 am]

**BILLING CODE 8010–01–P**

[35] Pub. L. 104–290, 110 Stat. 3416 (Oct. 11, 1996).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47523; File No. SR–CBOE–2002–69]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to Broker-Dealer Orders on RAES

March 18, 2003.

On November 26, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow the appropriate Floor Procedure Committee to determine, on a class and/or series basis, to prohibit access to RAES for broker-dealer orders after 3 p.m. The Exchange submitted Amendment No. 1 to the proposed rule change on January 21, 2003.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on February 14, 2003.[4] The Commission received no comments on the proposed rule change.

The Commission has reviewed carefully the CBOE's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[5] and with the requirements of section 6(b).[6] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[7] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that currently, the appropriate Floor Procedure Committee (''FPC'') may permit broker-dealer orders on RAES during the trading day for options by class and/or series. The CBOE is proposing to allow an FPC to determine, on a class and/or series basis, to prohibit access to RAES for broker-dealer orders after 3 p.m.

In support of this proposal, the CBOE has represented that the options pricing models used by its members to generate the autoquote on CBOE use the price of underlying securities on the appropriate securities exchange,[8] and explained that once the underlying stock stops trading, there is no price feed from the underlying securities to automatically update the options pricing models and the options series must be updated manually. The CBOE believes that adding broker-dealers orders to those eligible to be executed on RAES could potentially increase the number of automatically executed orders significantly. The CBOE is concerned that if broker-dealer orders are permitted on RAES during times when manual updating is required, this could create additional difficulties in updating the option pricing models in a timely manner.

CBOE has represented that that it would like to permit RAES access in more classes and/or series for broker-dealer orders if the appropriate FPC were permitted to limit the access in classes or series, where appropriate, to the time period when the exchanges for the underlying securities are open for their regular trading session, *i.e.*, until 3 p.m.

The Commission believes that the proposed rule change will permit broker-dealers to have access to RAES for the vast majority of the trading day. At the same time, the proposed rule change should minimize stress to the options pricing models when they are manually updated. The Commission further believes that the proposed rule change should provide the CBOE with sufficient flexibility to operate RAES in an efficient manner, while at the same time permitting increased competition for electronic orders and increasing liquidity in affected series or classes.

*It is therefore Ordered,* pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–2002–69) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–6984 Filed 3–24–03; 8:45 am]

**BILLING CODE 8010–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jaime Galvan, Attorney, CBOE, to Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, dated January 17, 2003 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 47332 (February 10, 2003), 68 FR 7633.

[5] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] For purposes of this discussion securities exchanges includes NASDAQ.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47515; File No. SR–CBOE–2003–11]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Linkage Fees

March 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 2003 the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to provide that its linkage fee structure operate as a pilot program for one year. The text of the proposed rule change is below; proposed language is italicized.[3]

* * * * *

CHICAGO BOARD OPTIONS EXCHANGE, INC.—FEE SCHEDULE, JANUARY 31, 2003

| | Per contract |
|---|---|
| 1. Option Transaction Fees [1 2 3 4 7]: | |
| Equity & QQQ Options | ..... |
| * * * * * * * | |
| VI. Non-Member Market Maker (not eligible for Prospective Fee Reduction Program) [8] | $.19 |
| Index Options | |
| * * * * * * * | |
| V. Non-Member Market Maker [8]: | |
| • S & P 100 (including OEF), PREMIUM > OR = $1 | .30 |
| • S & P 100 (including OEF), PREMIUM < $1 | .15 |
| * * * * * * * | |
| 2. Trade Match Fee [1 4 7]: | |
| * * * * * * * | |
| • All Other Equity, QQQ and Index Orders [8] | .05 |
| 3. Floor Brokerage Fee [1 5]: | |
| • All Other Equity, QQQ and Index Options [8] | .04 |
| 4. Raes Access Fee (Retail Automatic Execution System) [1 4]: | |
| * * * * * * * | |
| • Non-Customer Transactions (Origin Code Other Than ''C'')[8] | .30 |

**Notes:**

* * * * * * *

[8] Includes, *on a pilot basis until January 31, 2004,* orders from members of other exchanges executing Linkage transactions, except for Satisfaction Orders, which are not assessed Exchange fees per Linkage rules.

* * * * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

On January 31, 2003, the Commission approved a CBOE proposal adding rules concerning the intermarket options linkage.[4] As part of that filing, CBOE submitted an amendment making minor changes to the text of the proposed linkage rules and modifying CBOE's fee schedule to make clear that CBOE fees for linkage orders would be the same as CBOE fees for non-linkage orders from the same originating source (market makers on other exchanges). This filing merely proposes to establish that CBOE's fees for linkage orders will operate under a pilot program to allow the Commission and CBOE to gauge the suitability of the current linkage fees. The pilot would last until January 31, 2004.

Because all linkage orders received by CBOE are for the account of a broker-dealer market maker on another exchange, CBOE proposes that the fees applicable to such orders to be the same as fees applicable to market makers on other exchanges that submit orders to CBOE outside of the linkage taking into account how those orders are handled at CBOE. More specifically, the ''regular'' transaction fee applicable to non-member market makers would apply to linkage orders (currently $.19 per contract for equity options and QQQ options, and $.30 or $.15 per contract for OEF options depending on premium). Further, a $.05 per contract

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] At the request of the CBOE, nonsubstantive modifications were made to the proposed rule text as filed with the Commission to indicate omitted language. Telephone call between Angelo Evangelou, Senior Attorney, Legal Division, CBOE, and Jennifer Lewis, Attorney, Division of Market Regulation, Commission, on March 17, 2003.

[4] *See* Securities Exchange Act Release No. 47294 (January 31, 2003), 68 FR 6527 (February 7, 2003) approving SR–CBOE–2002–61.

trade match fee would also apply to each linkage order. Lastly, if a linkage order is executed in whole or in part on RAES,[5] a $.30 per contract RAES fee would apply, and if any portion of a linkage order is manually handled, a $.04 per contract floor brokerage fee is assessed.

2. Statutory Basis

The Exchange believes that the proposed rule change meets the requirement of section 6(b)(5) under the Act[6] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[5] RAES is the automated execution system feature of the Exchange's order routing system that is owned and operated by the Exchange and that provides automated order execution and reporting services for options. *See* Exchange rule 6.8.

[6] 15 U.S.C. 78f(b)(5).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2003–11 and should be submitted by April 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–6989 Filed 3–24–03; 8:45 am]

**BILLING CODE 8010–01–P**

[7] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47517; File No. SR–NASD–2002–158]**

## Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Establishment of a Nasdaq Official Closing Price and a Trade Report Modifier With Which To Identify That Price to the Public

March 18, 2003.

## I. Introduction

On November 1, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), 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 thereunder,[2] a proposed rule change to establish a Nasdaq Official Closing Price (''NOCP''), and a trade report modifier with which to identify that price to the public. The proposed rule change was published for comment in the **Federal Register** on December 26, 2002.[3] The Commission received seven comment letters regarding the proposal.[4] Nasdaq responded to the commenters in an amendment which Nasdaq filed with the Commission on January 28, 2003[5] and in a second response letter that Nasdaq filed with the Commission on March 7, 2003.[6] This order approves the proposed rule change, and approves Amendment No. 1 on an accelerated basis.

## II. Description of the Proposed Rule Change

*A. Background*

Nasdaq is proposing to establish an NOCP, and a trade report modifier with which to identify that price to the public. Nasdaq would program its proprietary systems to append the new

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47022 (December 18, 2002), 67 FR 78840.

[4] *See* letter from Brett W. Redfearn, Senior Vice President, Business Strategy and Equity Order Flow, American Stock Exchange LLC, to Jonathan G. Katz, Secretary, Commission, dated January 29, 2003 (''Amex Letter''); letter from Jeffrey T. Brown, Senior Vice President, Secretary and General Counsel, the Cincinnati Stock Exchange, Inc., to Mr. Jonathan G. Katz, Secretary, Commission, dated January 24, 2003 (''CSE Letter''); letter from Jon Kroeper, First Vice President and Associate General Counsel, Instinet Group Incorporated, to Mr. Jonathan G. Katz, Secretary, Commission, dated February 13, 2003 (''Instinet Letter''); letter from Donald J. Boteler, Vice President-Operations, Investment Company Institute, to Mr. Jonathan G. Katz, Secretary, Commission, dated January 15, 2003 (''Institute Letter''); letter from C. Thomas Richardson, Managing Director, Nasdaq Trading, and David Weisberger, Managing Director, U.S. Equities Models Trading, Salomon Smith Barney, to Mr. Jonathan Katz, Secretary, Commission, dated January 15, 2003 (''SSB Letter''); letter from Hendrik J. Kranenburg, Executive Vice President, Standard & Poor's, to Secretary, Commission, dated January 17, 2003 (''S&P Letter''); and letter from Scott W. Anderson, Associate Director and Counsel, Region Americas Legal, UBS Warburg LLC, to Jonathan G. Katz, Secretary, Commission, dated January 15, 2003 (''UBSW Letter'').

[5] *See* letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Alton S. Harvey, Office Head, Division of Market Regulation (''Division''), Commission, dated January 27, 2003 (''Amendment No. 1''). In Amendment No. 1, Nasdaq addresses the positive comments submitted with respect to the proposed rule change and proposes, in response to comments, to revise its original proposal to consider canceled or corrected trades submitted until 5:15:00 PM rather than 4:30:00 PM for the calculation of the NOCP.

[6] *See* letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Alton S. Harvey, Office Head, Division, Commission, dated March 7, 2003 (''Second Response Letter'').

modifier—''.M'' for Market Close—to one trade report message in each Nasdaq National Market and SmallCap security to identify it as the NOCP in that security. The dissemination of the NOCP would not affect the consolidated last sale price disseminated pursuant to the national market system plan governing trading of Nasdaq securities (''Nasdaq UTP Plan'') or the last sale price of any exchange that is a member of that plan.

Currently, Nasdaq does not have an official closing price. Instead, market participants generally use a last sale price that vendors identify from among the last sale prices that Nasdaq disseminates in its role as the Exclusive Securities Information Process (''ESIP'') for the Nasdaq UTP Plan. As the ESIP, Nasdaq currently disseminates a consolidated last sale price (''Consolidated Close''), which is the price of the last trade reported to the ESIP by any UTP Participant prior to 4:01:30 p.m. In addition, Nasdaq disseminates the last sale price of each individual participant in the Nasdaq UTP Plan (''Individual Market Close''), including Nasdaq, which is the price of the last trade reported by each individual participant market center prior to 4:01:30 p.m. Nasdaq market participants rely on either the Consolidated Close or Nasdaq's Individual Market Close for many post-close activities, including pricing indices, large institutional orders (commonly called ''market-on-close orders''), and mutual fund values. The Consolidated Close is the primary measure of the market for a variety of constituents, including sell-side and buy-side institutions, market indexers, securities issuers, and individual investors.

Nasdaq believes that, despite their widespread acceptance, the Consolidated Close and Nasdaq Individual Market Close are imperfect measures of the value of Nasdaq issues at the close of normal market hours. For instance, the Consolidated Close is somewhat arbitrary in that it is simply the price of the final unmodified trade to be reported to Nasdaq prior to 4:01:30 p.m. by any Nasdaq member or UTP Exchange. Due to wide disparities in the speed at which market participants report trades within Nasdaq's 90-second trade reporting window, trades reported at 4:01:30 p.m. can be significantly away from the market when it closes at 4:00:00 p.m. As a result, Nasdaq is concerned that the Consolidated Close may no longer reliably and accurately reflect each security's value at the close of the market.

*B. Mechanics of the Proposal*

Nasdaq proposes to replace the methodology currently used to calculate Nasdaq's Individual Market Close with the NOCP methodology described below. The NOCP would be based on the price of the last unmodified trade reported to Nasdaq's proprietary trade reporting system—Automated Confirmation Transaction System or ''ACT''—at or before 4:00:02 p.m. (the ''Predicate Trade''). Nasdaq systems would ''normalize'' the price of the Predicate Trade by comparing it to Nasdaq's best bid and ask prices (*i.e.*, the best prices displayed by all SuperMontage participants) at the time the Predicate Trade was reported, or by comparing it to the Nasdaq best bid and offer at 4:00:00 p.m. for trades reported after that time (''Predicate BBO'').[7] If the price of the Predicate Trade falls at either side of or within the Predicate BBO, that price becomes the NOCP. If the price of the Predicate Trade falls outside the Predicate BBO, Nasdaq would adjust it up to the Predicate BBO bid if it is below the bid price or down to the Predicate BBO ask if it is above the ask price. The NOCP methodology would only impact the Individual Market Close for Nasdaq; it would not impact the Consolidated Close or Individual Market Closes of the UTP Exchanges that are disseminated by the ESIP.

The Predicate Trade can be any trade that currently updates the Individual Market Close for Nasdaq, subject to certain limitations. First, Nasdaq would only consider trades submitted with the Nasdaq market center identifier. Specifically, Nasdaq would only consider trade reports submitted to ACT, either by NASD members or by UTP Exchanges that use Nasdaq's proprietary execution systems. Nasdaq would not consider trades reported by NASD members to any venue outside of Nasdaq, including the NASD Alternative Display Facility or other UTP Exchanges, nor would it consider any trades reported by UTP Exchanges not executed through Nasdaq proprietary systems. Thus, if no NASD member reports a trade in a given security to Nasdaq prior to 4:00:02 p.m., Nasdaq would report no NOCP in that security.

Second, Nasdaq would only consider unmodified trades reported at or before 4:00:02 p.m. Nasdaq chose 4:00:02 p.m. as the proper reference point to provide every trade type a reasonable chance to set the close. The current close disadvantages certain trade types that are reported too quickly to set the closing price, such as trades reported via Nasdaq execution systems or by market participants' own automated systems, which often report trades almost instantly. In fact, NASD members report over 90 percent of trades to Nasdaq within two seconds of execution, despite Nasdaq's 90-second trade reporting window. Nasdaq believes that unmodified trades would more accurately reflect the true state of the market at the close of normal market hours. Thus, Nasdaq would not consider trade reports submitted after 4:00:02 p.m. and, with one exception, it would not consider any trades reported with a modifier, such as a .T (after normal market hours), .OR (out of range), or .PRP (prior reference price).[8]

Third, in its original filing, Nasdaq proposed to adjust the NOCP only if the Predicate Trade is cancelled or corrected by 4:30:00 p.m., even though Nasdaq would continue to accept trade cancel and correction messages via ACT until 5:15:00 p.m. If, between 4:00:02 p.m. and 4:30:00 p.m., a market participant enters a cancel or correct message regarding the Predicate Trade, Nasdaq would process that message, and recalculate the NOCP. Nasdaq would not consider in the NOCP calculation any cancel or correct message that arrives after 4:30:00 p.m. However, as discussed more fully below, Nasdaq has revised its proposal in Amendment No. 1 to consider cancelled or corrected trades submitted until 5:15:00 p.m. rather than 4:30:00 p.m. for the calculation of the NOCP.[9]

*C. Impact on the Consolidated Last Sale Calculation*

The NOCP would not be eligible to set the Consolidated Close under the Nasdaq UTP Plan, although the Predicate Trade would be eligible as are all unmodified trade reports. While the NOCP is based on an actual trade, it is not necessarily an actual trade price. Therefore, Nasdaq believes that including it in the Consolidated Close is not consistent with the Nasdaq UTP Plan. It would also give Nasdaq an unfair advantage by providing an additional opportunity for Nasdaq to set the Consolidated Close. To avoid that

[7] Nasdaq Market participants would not have the ability to append the new modifier to trade reports; only Nasdaq trade reporting systems would append this modifier, and only for transactions in Nasdaq National Market and SmallCap Market securities.

[8] Nasdaq would consider a trade submitted to Nasdaq with a .SLD modifier (reported more than 90 seconds after execution) or a .PRP modifier to be the Predicate Trade if, and only if, it is the only trade of the day by any market participant. In that case, the Predicate BBO would be the BBO at the time the trade was reported.

[9] *See* Amendment No. 1, *supra* note 5.

result, Nasdaq would append the .M modifier and publish it with a trade size of zero to signal to the ESIP and vendors not to include it in the Consolidated Close calculation. The NOCP would, on the other hand, be used to populate the Nasdaq Individual Market Close field that the ESIP currently disseminates. The Predicate Trade would be reported to the ESIP according to Nasdaq's existing trade reporting rules and it would be eligible to set the Consolidated Close, as it would be today.

Nasdaq recognizes that it must educate investors and vendors about its new NOCP and the .M modifier to avoid creating confusion. Currently, the Nasdaq ESIP disseminates a Closing Trade Summary Report that includes the Consolidated Close as well as the Individual Market Closes for Nasdaq and for each UTP Exchange that trades Nasdaq securities. If this proposal is approved, the Individual Market Close field for Nasdaq in the Closing Trade Summary Report would contain the NOCP in place of its last sale price. Neither the Consolidated Close nor any of the Individual Market Closes for any UTP Exchange would be affected by this proposal.

The Nasdaq ESIP is engaged in a development effort to accommodate the new trade modifier and its treatment in the consolidated data streams. Nasdaq has also discussed the addition of the new .M trade modifier with the UTP Operating Committee, and has made it clear that any UTP participant can use the new trade modifier if it chooses.

## III. Summary of Comments and Nasdaq's Responses

As noted above, the Commission received seven comment letters regarding the original proposal.[10] Nasdaq filed Amendment No. 1 to the proposal[11] to respond to the positive comments received by four of the commenters[12] and also filed the Second Response Letter[13] to address further concerns raised by three of the commenters.[14]

### *A. Amendment No. 1*

Three of the commenters addressed in Amendment No. 1 fully supported Nasdaq's proposed rule change.[15] One commenter believed that the institution of an official closing price for the Nasdaq market would greatly enhance the overall integrity of the market and that the proposed methodology for calculating the NOCP appeared sensible and reasonably impervious to manipulation.[16] Another commenter stated that the implementation of Nasdaq's proposal would result in the determination of closing values that accurately and consistently reflect market conditions at the close and is an improvement that would provide greater financial market transparency.[17] The third commenter believed that the proposal would provide tremendous benefits to the marketplace and improve stability and predictability across the Nasdaq market and enthusiastically supported each of the three components of the proposal: (1) Reducing the consideration time for inclusion in the closing price from 4:01:30 to 4:00:02 p.m.; (2) restricting the closing price to trades effected on Nasdaq; and (3) ''normalizing'' closing prices based upon the closing inside market.[18]

Furthermore, under the proposal, Nasdaq would adjust the NOCP only if the Predicate Trade is cancelled or corrected by 4:30:00 p.m., even though Nasdaq would continue to accept trade cancel and correction messages via its ACT until 5:15:00 p.m. Although supporting the proposed rule change, one commenter questioned Nasdaq's willingness to accept trade cancel and correction messages via ACT until 5:15:00 p.m., inasmuch as this would result in a disconnect between the NOCP and ACT.[19] While Nasdaq asserted that it receives over 99 percent of cancel or corrections before 4:30:00 p.m., this commenter believed that material changes consistently occur after 4:30:00 p.m. The commenter also believed that a failure to synchronize these two events would very likely result in mutual funds being compelled to disregard the NOCP at 4:30:00 p.m.[20] Similarly, another commenter indicated that the 4:30:00 p.m. deadline would be 45 minutes prior to the time that other markets continue to accept adjustments.[21] In response to comments, Nasdaq revised its proposal in Amendment No. 1 to extend the calculation of the NOCP to 5:15:00 p.m.[22] Nasdaq believed that the 5:15:00 p.m. cut-off would permit flexibility to review and correct trades that occur during the busiest trading of the day, while fulfilling the equally important need for finality in the closing price calculation.

### *B. Second Response Letter*

As noted above, the Commission received three comment letters that raised procedural, competitive, and methodological concerns with respect to the proposed rule change.[23] Nasdaq filed the Second Response Letter to specifically address these comments.[24]

#### 1. Procedural Issues

Because Nasdaq would be replacing the Nasdaq UTP Plan's methodology in calculating its close with the NOCP methodology, proposing that the Predicate Trade be ''normalized,'' and introducing new cut off times for calculating its individual close and disseminating that info through the ESIP facilities and thus changing the closing reports disseminated by the ESIP to display the NOCP instead of the Nasdaq UTP Plan's standard calculation, three of the commenters believed that Nasdaq should not be permitted to bypass the UTP Operating Committee or the terms of the Nasdaq UTP Plan, but instead should seek UTP Operating Committee interpretation or Nasdaq UTP Plan amendment to accommodate the NOCP.[25] The commenters also criticized Nasdaq for not involving other interested Nasdaq UTP Plan participants in developing the specifications for the SIP system changes before starting development work[26] and that Nasdaq designed the .M modifier accommodated by the ESIP in a fashion that is suited to its own particular system needs.[27] Furthermore, one of the commenters questioned Nasdaq's stated purpose for proposing the rule change, stating that if Nasdaq had a legitimate concern about the methodology specified in the Nasdaq UTP Plan for calculating the consolidated close, the appropriate forum to address that issue would be the UTP Operating

[10] *See supra* note 4.

[11] *See* Amendment No. 1, *supra* note 5.

[12] *See* Institute Letter, SSB Letter, S&P Letter and UBSW Letter, *supra* note 4.

[13] *See* Second Response Letter, *supra* note 6.

[14] *See* Amex Letter, CSE Letter and Instinet Letter, *supra* note 4.

[15] *See* SSB Letter, S&P Letter and UBSW Letter, *supra* note 4.

[16] *See* UBSW Letter, *supra* note 4.

[17] *See* S&P Letter, *supra* note 4.

[18] *See* SSB Letter, *supra* note 4.

[19] *See* Institute Letter, *supra* note 4.

[20] This commenter also suggested that the deadline for cancel and correction messages for both the NOCP and for ACT be set at 5:00:00 p.m. rather than 5:15:00 to provide mutual funds an additional 15 minutes to calculate daily closing prices. *See* Institute Letter, *supra* note 4. In response, Nasdaq stated that, while it cannot implement that recommendation via this proposal, it understands the logic of the commenter's recommendation and commits to continue discussions on this proposal with the commenter and with Nasdaq's membership. *See* Amendment No. 1, *supra* note 5.

[21] *See* CSE Letter, *supra* note 4.

[22] *See* Amendment No. 1, *supra* note 5.

[23] *See* Amex Letter, CSE Letter and Instinet Letter, *supra* note 4.

[24] *See* Second Response Letter, *supra* note 6.

[25] *See* Amex Letter, CSE Letter and Instinet Letter, *supra* note 4.

[26] *See* Amex Letter and CSE Letter, *supra* note 4.

[27] *See* CSE Letter and Instinet Letter, *supra* note 4.

Committee.[28] Moreover, this commenter believed that Nasdaq was baselessly questioning the integrity of the consolidated close and the surveillance conducted by the Nasdaq UTP Plan participants and argued that the quality of a market's surveillance procedures should be evaluated by the Commission and not by competing markets.

In the Second Response Letter, Nasdaq indicated that on March 4, 2003, the UTP Operating Committee unanimously approved a resolution that was designed to address the commentors' procedural concerns.[29] Nasdaq introduced this resolution to the UTP Operating Committee to address the concerns expressed by two of the commenters.[30] According to Nasdaq, the UTP Operating Committee discussed Nasdaq's proposal during several meetings in January and February, and, on March 4, 2003, unanimously voted that the establishment and use of the .M modifier would be consistent with the terms of the Nasdaq UTP Plan. The Operating Committee also approved the modifications to the SIP that are needed to implement the proposed establishment and use of the .M modifier.

Furthermore, Nasdaq agreed to delay the implementation of the proposal until April 14, 2003 to provide members of the UTP Operating Committee with additional time to consider the technical specifications prior to implementing the proposed trade message modifier in their own markets. Nasdaq believes that the approval of this resolution and the agreed-upon delay in implementation clearly address the commentors' procedural objections regarding compliance with the Nasdaq UTP Plan.

2. Competitive Issues

Two commenters believed that Nasdaq did not comply with its obligations as ESIP to operate independently of its associated order matching facility and that the apparent circumstances surrounding the exclusive SIP's engagement in system development work to accommodate the NOCP, without any apparent joint decisions by the UTP Operating Committee, raises serious competitive concerns.[31] Such circumstances may indicate that Nasdaq has undue influence over Nasdaq UTP Plan systems development priorities.

Two commenters expressed concern that Nasdaq may be disrupting the established system for calculating the consolidated close for its own anticompetitive reasons or may be receiving preferential treatment from the SIP and thus would frustrate the requirements for a national market system[32] in section 11A and section 11A(a)(1)(C)(ii) of the Act.[33] One commenter urged the Commission to examine whether the SIP is being operated in a truly market-neutral manner, is not unduly influenced by Nasdaq, and is not providing Nasdaq with any competitive advantages over other participant markets.[34] Similarly, the other commenter did not view Nasdaq's proposal as an example of the fair competition and regulatory harmony contemplated under the Act because Nasdaq appeared to be: disregarding the Nasdaq UTP Plan requirements and inappropriately using its position as ESIP to establish parallel dissemination practices applicable only to its market data for its own competitive advantage; dictating the introduction of earlier dissemination times without necessity of UTP Operating Committee vote, and unilaterally modifying the calculation of the consolidated close.[35] Furthermore, because the calculations and displays would no longer be based on a single standardized methodology and would introduce factors other than an actual reported trade in the determination of a closing price, both commenters believed that Nasdaq's proposal would afford the opportunity for investor confusion as it would eliminate the ''apples-to-apples'' comparison of individual market prices.[36] Due to the significant value of retaining consistent methodologies in a market like that for Nasdaq-quoted securities, where trading activity is widely dispersed among different trading venues, these commenters suggested that existing reports should continue to contain the same calculations as necessary to maintain the integrity and clarity of the closing price information across the markets.[37]

Finally, one commenter expressed the view that Nasdaq's actions were inconsistent with (b)(6) and (b)(9) of section 15A[38] which require that Nasdaq not design rules intended to discourage cooperation and coordination among regulators, regulate matters not related to the purposes of the administration of its markets, and impose unnecessary and inappropriate burdens on competition.[39]

In response to comments, Nasdaq stated that it is not attempting to disrupt the calculation of the consolidated close, but rather has avoided interfering with the existing consolidated close, which would be calculated and disseminated exactly as it has been regardless of this proposal.[40] Furthermore, every trade that currently is eligible to set the consolidated close would continue to be eligible if this proposal is approved, and no trade that is currently not eligible would become so. Similarly, Nasdaq clarified that the Predicate Trade that forms the basis of the NOCP would be eligible to set the consolidated close, as it is today, while the NOCP message itself, which is new, would not be eligible. Nasdaq also noted, in response to the comments, that use of the NOCP is completely voluntary on the part of industry participants; Nasdaq's proposal would simply create one alternative closing price for industry participants to use. Moreover, Nasdaq's proposal would not preclude the use of other closing prices, such as the consolidated close or market specific closing prices that exist today. In fact, Nasdaq believes that its proposal explicitly invites other markets to establish a competing market-centric closing price, and to use the .M modifier to designate their own official closing price to market participants.

Furthermore, Nasdaq does not believe that the commenters presented a credible argument that Nasdaq was operating anti-competitively. Specifically, Nasdaq believes that it has not abused its role as the SIP. Because Nasdaq is aware of its unique role as the processor for the Nasdaq UTP Plan and to avoid the appearance of bias, Nasdaq agreed to delay the implementation of its proposal until April 14, 2003 from the original, scheduled implementation date of March 24, 2003. According to Nasdaq, this extension would permit Nasdaq UTP Plan participants, including the commentors, extra time to program their systems to use the .M modifier or to develop a proposal that would better serve their needs.

3. Methodological Issues

Although one commenter supported reducing the inclusion time for calculating the NOCP at 4:00:02 p.m.

[28] *See* CSE Letter, *supra* note 4.

[29] *See* Second Response Letter, *supra* note 6.

[30] *See* Amex Letter and CSE Letter, *supra* note 4.

[31] *See* Amex Letter and Instinet Letter, *supra* note 4.

[32] *See* CSE Letter and Instinet Letter, *supra* note 4.

[33] 15 U.S.C 78k and 15 U.S.C. 78k–1(a)(1)(C)(ii).

[34] *See* Instinet Letter, *supra* note 4.

[35] This commenter was also concerned with the precedential impact this proposal would have on future proposals by any market participant. *See* CSE Letter, *supra* note 4.

[36] *See* CSE Letter and Instinet Letter, *supra* note 4.

[37] *See* CSE Letter and Instinet Letter, *supra* note 4.

[38] 15 U.S.C. 78o–3(b)(6) and 15 U.S.C. 78o–3(b)(9).

[39] *See* CSE Letter, *supra* note 4.

[40] *See* Second Response Letter, *supra* note 6.

because it would eliminate the incentive and opportunity for gamesmanship,[41] another commenter believed that the earlier cut off and dissemination aspect of the proposal has competitive effects on the Consolidated Close that is disseminated 88 seconds later, and excludes legitimate trades from consideration for Nasdaq's individual market closing price (*i.e.* those trades reported after 4:00:02 PM).[42] Three of the commenters also stated that the timing is materially different and contrary to the Nasdaq UTP Plan and thus would undermine the Nasdaq UTP Plan's methodology used to calculate its close.[43]

With respect to Nasdaq only considering trade reports submitted to ACT, either by NASD members or by UTP Exchanges that use Nasdaq's proprietary execution systems, two commenters stated that Nasdaq, as the primary market for Nasdaq securities, would clearly be in the best position to function in the capacity of determining the closing price.[44] In contrast, one commenter believed that other markets' trades should be measured separate from the Nasdaq market close,[45] and another commenter similarly questioned whether it would be appropriate to use UTP Exchange information in the ''normalization'' process for determining a Nasdaq market-specific close, or whether it would it be more appropriate for Nasdaq to filter out UTP Exchange information from the Nasdaq BBO used in the ''normalization'' process.[46]

Furthermore, some of the commenters indicated that the potential anti-competitive impact of Nasdaq's proposed methodology for calculating and disseminating the NOCP require that Nasdaq not use the term ''official'' to describe any value that it may disseminate according to the proposed methodology.[47] The commenters considered this to be misleading to vendors and market participants as well as encourages consumers of closing price information (*i.e.* issuers, mutual funds, and the media) to use the NOCP to the exclusion of other closing price data. Furthermore, they believed that Nasdaq should not be permitted to characterize the price that it proposes to disseminate as the ''official'' price in view of its exclusion of so much Nasdaq volume from its calculation (*i.e.* transactions of Nasdaq UTP Plan participants not using ACT).[48]

Finally, although one commenter favored Nasdaq's proposed process of ''normalization'' in calculating the NOCP,[49] two commenters believed that the ''normalization'' process could exacerbate the issue of inaccurate closing prices and create an incentive for Nasdaq market makers to manipulate quotes in order to set the closing price or potentially expose the NOCP to greater risk of manipulation than the current process, particularly in lower-volume securities.[50] One of these commenters further questioned whether the NOCP, through ''normalizing'' a Predicate Trade, would produce a better measurement of the closing price than the Predicate or the Nasdaq individual market close under the existing Nasdaq UTP Plan methodology.[51]

In its Second Response Letter, Nasdaq expressed the view that each market should be free to determine its own closing price methodology, provided its chosen method is consistent with the Act.[52] Nasdaq indicated that it had carefully considered the aspects of the NOCP methodology and does not believe that its proposal raises any statutory basis for rejecting the proposal. Nasdaq also noted that the commentors failed to identify a way in which Nasdaq's proposal would be inconsistent with the Act.[53]

With respect to the objections raised against Nasdaq's use of the term ''official'' in describing the NOCP, Nasdaq believes these arguments rely on the faulty premise that market participants are statutorily required to utilize the consolidated closing price established in the Nasdaq UTP Plan, when they are not. Nasdaq indicated that market participants are free to use myriad closing prices, each of which is consistent with the Act. Nasdaq believed that the consolidated closes, the individual closing price of the NYSE, and the NOCP, if approved, are constructs used to assess the value of a given security at the close of regular trading, leaving investors free to determine which closing price to use.

In response to issues raised by the commenters, Nasdaq indicated that ultimately it would be competition, rather than anti-competition, that would determine whether market participants consider the NOCP meaningful. Nasdaq argued that if Nasdaq's method for determining its own closing price is flawed, as some commenters claimed, then market participants would not utilize the NOCP and Nasdaq's attempt to compete would fail. However, based upon the overwhelmingly positive comments by disinterested market participants that would be using a closing price, Nasdaq is confident that its chosen methodology is valid and likely to be accepted in the marketplace. In either case, Nasdaq believes that competition would have occurred as contemplated by the Act.

Furthermore, Nasdaq acknowledged that no closing price methodology, the NOCP included, would produce a perfect closing price in every stock every day. In response, Nasdaq would like to ensure market participants that Nasdaq MarketWatch would continue its intensive, real-time surveillance of quoting and trading activity in Nasdaq at the close of trading. Just as Nasdaq MarketWatch has the authority to suppress trades that could improperly affect the closing price today, it would retain the same authority with respect to the NOCP.

## IV. Discussion

After careful review of the proposed rule change, the comment letters, and Nasdaq's response to comments, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

[41] *See* SSB Letter, *supra* note 4.

[42] *See* CSE Letter, *supra* note 4.

[43] *See* Amex Letter, CSE Letter and Instinet Letter, *supra* note 4.

[44] *See* SSB Letter and UBSW Letter, *supra* note 4. The SSB Letter indicated that designating the closing process to Nasdaq and the establishment of a uniform, consistent system would have infrequent but important positive marketplace impact over the current environment. The UBSW Letter noted that this is similar to the New York Stock Exchange, Inc.'s (''NYSE'') long-established practice of disseminating an NYSE Closing Price based upon the last NYSE-only regular way trade in each NYSE-listed security. *Id.*

[45] *See* CSE Letter, *supra* note 4.

[46] *See* Instinet Letter, *supra* note 4.

[47] *See* Amex Letter and Instinet Letter, *supra* note 4. The Amex Letter stated that any Nasdaq closing information designated as ''official'' should be as agreed to by all Nasdaq UTP Plan participants. *Id.*

[48] *See* Amex Letter and Instinet Letter, *supra* note 4. As the NOCP calculations would not take into account quotation and trade reporting activity occurring outside of Nasdaq, the Instinet Letter expressed the view that the NOCP would not be an acceptable surrogate for a consolidated closing price, and using it would not appear to present the complete view of the overall market required to ensure the accuracy and integrity of closing values and thus serve investors' interests. *Id.*

[49] *See* SSB Letter (noting that the process helps eliminate outlying inconsistencies and exclude from the closing price trades that are clearly unrelated to contemporaneous closing inside markets), *supra* note 4. *See also* S&P Letter (indicating that the proposal would reduce the risk of an outlier setting the closing price for a given equity security), *supra* note 4.

[50] *See* CSE Letter and Instinet Letter, *supra* note 4.

[51] *See* Instinet Letter, *supra* note 4.

[52] *See* Second Response Letter, *supra* note 6.

[53] Nasdaq also corrected the comment in the CSE Letter which inaccurately stated that Nasdaq would separately disseminate its NOCP information at 4:00:02 p.m., when, in fact, that information would be disseminated at 4:01:30 p.m. *See* Second Response Letter, *supra* note 6.

association.[54] Specifically, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 15A of the Act in general,[55] and section 15A(b)(6) of the Act in particular,[56] which provides that the rules of the association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the establishment of an NOCP and a trade report modifier with which to identify that price to the public may be a reasonable alternative closing price that industry participants may choose to use. The Commission also notes that Nasdaq has represented that the NOCP methodology would only impact the Individual Market Close for Nasdaq and would not impact the Consolidated Close or Individual Market Closes of the Nasdaq UTP Plan exchanges that are disseminated by the ESIP. While the NOCP is based on an actual trade, it is not necessarily an actual trade report. Therefore, the Commission believes that the NOCP may provide benefits to the marketplace and investors so long as investors are aware of the nature of the NOCP and its calculation. The Commission also believes that the elements of Nasdaq's proposal appear to be a reasonable attempt at increasing transparency and providing stability and predictability to the closing prices in Nasdaq securities.

Furthermore, in response to the procedural objections against Nasdaq for not consulting with and receiving approval from the UTP Operating Committee prior to filing the proposed rule change, the Commission notes that Nasdaq received a unanimous approval for the establishment and use of the .M modifier from the UTP Operating Committee and has also agreed to delay its implementation of the NOCP until April 14, 2003 in order to provide members of the UTP Operating Committee with additional time to consider the technical specifications prior to implementing the proposed modifier in their own markets.[57]

With regard to the other issues raised by commenters, the Commission is satisfied that Nasdaq has reasonably addressed the commenters' concerns.

Furthermore, the Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.[58] Nasdaq filed Amendment No. 1 in response to comments it received after the publication of the notice of filing of the proposed rule change to address certain commenters' concerns.[59] Because Amendment No. 1 is responsive to these commenters' concerns, the Commission finds good cause for accelerating approval of Amendment No. 1.

## V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 Amendment No. 1 that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–158 and should be submitted by April 15, 2003.

## VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[60] that the proposed rule change (SR–NASD–2002–158) be, and it hereby is, approved, and that Amendment No. 1 to the proposed rule change be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[61]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–6985 Filed 3–24–03; 8:45 am]

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[54] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[55] 15 U.S.C. 78o–3.

[56] 15 U.S.C. 78o–3(b)(6).

[57] *See* Second Response Letter, *supra* note 6.

[58] 15 U.S.C. 78s(b)(2).

[59] Certain commenters objected to Nasdaq's proposal to adjust the NOCP only if the Predicate Trade is cancelled or corrected by 4:30:00 PM, even though Nasdaq would continue to accept trade cancel and correction messages via ACT until 5:15:00 p.m. *See* CSE Letter and Institute Letter, *supra* note 4. However, in response to comments, Nasdaq revised its proposal in Amendment No. 1 to consider cancelled or corrected trades submitted until 5:15:00 PM rather than 4:30:00 PM for the calculation of the NOCP. *See* Amendment No. 1, *supra* note 5.

[60] 15 U.S.C. 78s(b)(2).

[61] 17 CFR 200.30–3(a)(12).

# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47516; File No. SR–NASD–2002–141]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments to NASD Rules 4200 and 4350 Regarding Board Independence and Independent Committees

March 17, 2003.

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 October 9, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On March 11, 2003, Nasdaq submitted 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.

## I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes amendments to NASD Rules 4200 and 4350 to modify the definition of the term ''independent director.''

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 11, 2003 (''Amendment No. 1''). In Amendment No. 1, Nasdaq proposed revisions to (1) the definition of ''independent director'' and (2) Nasdaq's listing standards with respect to provisions governing independent directors and audit committees. Amendment No. 1 supersedes and replaces in its entirety the original proposed rule change that Nasdaq filed with the Commission on October 9, 2002.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.[4]

* * * * *

**Rule 4200. Definitions**

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)–(13) No change.

(14) *''Family Member'' means any person who is a relative by blood, marriage or adoption or who has the same residence.*

*(15)* ''Independent director'' means a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship, which, in the opinion of the company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The following persons shall not be considered independent:

(A) a director who is*, or during the past three years was,* employed by the [corporation] *company* or *by any parent or subsidiary of the company* [any of its affiliates for the current year or any of the past three years];

(B) a director who accepts *or who has a Family Member who accepts* any [compensation] *payments* from the [corporation] *company* or any [of its affiliates] *parent or subsidiary of the company* in excess of $60,000 during the *current fiscal year or any of the past three fiscal years* [previous fiscal year], other than compensation for board service, *payments arising solely from investments in the company's securities, compensation paid to a Family Member who is an employee of the company or a parent or subsidiary of the company (but not if such person is an executive officer of the company or any parent or subsidiary of the company),* benefits under a tax-qualified retirement plan, or non-discretionary compensation *(provided, however, that audit committee members are subject to heightened requirements under Rule 4350(d));*

(C) a director who is a [member of the immediate] [f]*F*amily *Member* of an individual who is, or [has been in any of] *during* the past three years *was,* employed by the [corporation] *company* or *by* any [of its affiliates] *parent or subsidiary of the company* as an executive officer[. Immediate family includes a person's spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and anyone who resides in such person's home];

(D) a director who is a partner in, or a controlling shareholder or an executive officer of, any [for-profit business] organization to which the [corporation] *company* made, or from which the [corporation] *company* received, payments (other than those arising solely from investments in the [corporation's] *company's* securities) that exceed 5% of the *recipient's* [corporation's or business organization's] consolidated gross revenues for that year, or $200,000, whichever is more, in *the current fiscal year or* any of the past three *fiscal* years;

(E) a director *of the listed company* who is employed as an executive *officer* of another entity where any of the [company's] executive[s] *officers of the listed company* serve on [that entity's] *the* compensation committee *of such other entity, or if such relationship existed during the past three years; or*

*(F) a director who is or was a partner or employee of the company's outside auditor, and worked on the company's audit, during the past three years.*

Former (15)–(37) renumbered as (16)–(38).

**IM—4200 Definition of Independence—Rule 4200(a)(15)**

*It is important for investors to have confidence that individuals serving as independent directors do not have a relationship with the listed company that would impair their independence. The board has a responsibility to make an affirmative determination that no such relationships exist through the application of Rule 4200. Rule 4200 also provides a list of certain relationships that preclude a board finding of independence. These objective measures provide transparency to investors and companies, facilitate uniform application of the rules, and ease administration. Because Nasdaq does not believe that ownership of company stock by itself would preclude a board finding of independence, it is not included in the aforementioned objective factors. The Rule's reference to a ''parent or subsidiary'' is intended to cover entities that are consolidated with the issuer's financial statements. It should also be noted that there are additional, more stringent requirements that apply to audit committees, as specified in Rule 4350.*

**Rule 4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq Small Cap Market Issuers Except for Limited Partnerships**

(a)–(b) No change.

(c) Independent Directors

[Each issuer shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4350(d)(2).]

*(1) A majority of the board of directors must be comprised of independent directors as defined in Rule 4200.*

*(2) Independent directors must have regularly scheduled meetings at which only independent directors are present (''executive sessions'').*

*(3) Compensation of Officers*

*(A) Compensation of the chief executive officer of the company will be determined either by:*

*(i) a majority of the independent directors meeting in executive session, or*

*(ii) a compensation committee comprised solely of independent directors meeting in executive session.*

*(B) Compensation of all other officers, as that term is defined in section 16 of the Act and Rule 16a–1 thereunder, will be determined either by:*

*(i) a majority of the independent directors, or*

*(ii) a compensation committee comprised solely of independent directors.*

*The chief executive officer may be present during deliberations, but may not vote.*

*(C) Notwithstanding paragraphs (3)(A)(ii) and (3)(B)(ii) above, if the compensation committee is comprised of at least three members, one director who is not independent as defined in Rule 4200 and is not a current officer or employee or a Family Member of such person, may be appointed to the compensation committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement subsequent to such determination, the nature of the relationship and the reasons for the determination. A member appointed under this exception may not serve longer than two years.*

(*4*) *Nomination of Directors*

(*A*) *The nomination of company directors will be determined either by:*

*(i) a majority of the independent directors, or*

[4] At Nasdaq's request, a few nonsubstantive changes were made to the proposed rule text as filed with the Commission to correct formatting errors. Telephone calls between Sara Bloom, Office of General Counsel, Nasdaq, and Jennifer Lewis, Attorney, Division of Market Regulation (''Division''), Commission, on March 14, 2003 and Eleni Constantine, Office of General Counsel, Nasdaq, and Jennifer Lewis, Attorney, Division, Commission, on March 17, 2003.

*(ii) a nominations committee comprised solely of independent directors.*

*(B) Notwithstanding paragraph (4)(A)(ii) above, if the nominations committee is comprised of at least three members, one director, who is not independent as defined in Rule 4200 and is not a current officer or employee or a Family Member of such person, may be appointed to the nominations committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement subsequent to such determination, the nature of the relationship and the reasons for the determination. A member appointed under this exception may not serve longer than two years.*

*(C) Notwithstanding paragraph (4)(A)(ii) above, if the nominations committee is comprised of at least three members, and if the exception described in paragraph (4)(B) is not relied upon, one director who owns 20% or more of the company's common stock or voting power outstanding, and is not independent as defined in Rule 4200 because that director is also an officer, may be appointed to the nominations committee if the board determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement subsequent to such determination, the nature of the relationship, and the reasons for the determination.*

*(5) A Controlled Company is exempt from the requirements of this subsection (c). A Controlled Company is a company of which more than 50% of the voting power is held by an individual, a group or another company. A Controlled Company relying upon this exemption must disclose in its annual meeting proxy statement that it is a Controlled Company and the basis for that determination.*

*(d) Audit Committee*

(1) Audit Committee Charter

Each issuer must certify that it has adopted a formal written audit committee charter and that the audit committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify [the following]:

(A)–(B) No change.

(C) [the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement)] *the committee's purpose of overseeing the accounting and financial reporting processes of the issuer and the audits of the financial statements of the issuer;*

(D) *the following specific audit committee responsibilities and authority:*

*(i) the pre-approval of all audit services and permissible non-audit services as set forth in section 10A(i) of the Act;*

*(ii) the sole authority to appoint, determine funding for and oversee the outside auditors as set forth in section 10A(m)(2) of the Act;*

*(iii) the responsibility to establish procedures for complaints as set forth in section 10A(m)(4) of the Act; and*

*(iv) the authority to engage and determine funding for independent counsel and other advisors as set forth in section 10A(m)(5) of the Act.*

(2) Audit Committee Composition

(A) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, [comprised solely of independent directors] each of whom [is]*:*

*(i) must: (a) be independent as defined under Rule 4200, (b) meet the criteria for independence set forth in section 10A(m)(3) of the Act, and (c) not own or control 20% or more of the issuer's voting securities (or such lower measurement as may be established by the SEC in rulemaking under section 10A(m) of the Act); and*

*(ii) must be* able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement [or will become able to do so within a reasonable period of time after his or her appointment to the audit committee]. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee [that] *who* has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(B) Notwithstanding paragraph *(2)*(A)*(i),* one director who: (*i*) Is not independent as defined in Rule 4200, [and] *(ii) meets the criteria set forth in section 10A(m)(3) of the Act and the rules thereunder, (iii) does not own or control 20% or more of the issuer's voting securities (or such lower measurement as may be established by the SEC in rulemaking under section 10A(m)(3) of the Act), and (iv)* is not a current *officer or* employee or a[n immediate] *F*[f]amily *M*[m]ember of such [employee] *person,* may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination. *A member appointed under this exception may not serve longer than two years and may not chair the audit committee.*

[(C) Exception for Small Business Filers—Paragraphs (2)(A) and (2)(B) do not apply to issuers that file reports under SEC Regulation S–B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.]

(e)–(l) No change.

IM–4350–4 Board Independence and Independent Committees

**Independent Directors and Independent Committees—Rule 4350(c)**

*Majority Independent Board. Independent directors (as defined in Rule 4200(A)(15)) play an important role in assuring investor confidence. Through the exercise of independent judgment, they act on behalf of investors to maximize shareholder value in the companies they oversee and guard against conflicts of interest. Requiring that the board be comprised of a majority of independent directors will empower such directors to more effectively carry out these responsibilities.*

*Executive Sessions of Independent Directors. Regularly scheduled executive sessions will encourage and enhance communication among independent directors. It is contemplated that executive sessions will occur at least twice a year, and perhaps more frequently, in conjunction with regularly scheduled board meetings.*

*Independent Director Oversight of Executive Compensation. Independent director oversight of executive officer compensation will help assure that appropriate incentives are in place, consistent with the board's responsibility to maximize shareholder value. The Rule is intended to provide flexibility for an issuer to choose an appropriate 3 board structure and to reduce resource burdens, while ensuring independent director control of compensation decisions.*

*Independent Director Oversight of Director Nominations. Independent director oversight of nominations enhances investor confidence in the selection of well-qualified director nominees, as well as independent nominees as required by the Rules. This Rule is also intended to provide flexibility for a company to choose an appropriate board structure and reduce resource burdens, while ensuring that independent directors approve all nominations.*

*This Rule will not apply in cases where the right to nominate a director legally belongs to a third party. For example, investors may negotiate the right to appoint directors in connection with an investment in the company, holders of preferred stock may be permitted to nominate or appoint directors upon certain defaults, or the company may be a party to a shareholder's agreement that allocates the right to nominate some directors. Because the right to nominate directors in these cases does not reside with the company, independent director approval would not be required.*

*Controlled Company Exception.* This exception recognizes that majority shareholders, including parent companies, have the right to select directors and control certain key decisions, such as executive officer compensation, by virtue of their ownership rights. In order for a group to exist for purposes of this Rule, the shareholders must have publicly filed a notice that they are acting as a group (*e.g., a Schedule 13D). It should be emphasized that this controlled company exception does not extend to the audit committee requirements under Rule 4350.*

**Audit Committees—Rule 4350(d)**

*Audit Committee Charter. A company's audit committee is required to adopt a formal written charter that specifies the scope of its responsibilities and the means by which it carries out those responsibilities; the outside auditor's accountability to the audit committee; and the audit committee's responsibility to ensure the independence of the outside auditor. Consistent with this, the charter must specify all audit committee responsibilities set forth in section 10A of the Act. The rights and responsibilities as articulated in the audit committee charter empower the audit committee and enhance its effectiveness in carrying out its responsibilities. While the audit committee is empowered to retain outside consultants, it is not expected to do so routinely. Rather, it is expected that such authority would be exercised in response to specific circumstances giving rise to an audit committee determination that such action is in the best interest of the company and its shareholders.*

*Audit Committee Composition. Audit committees are required to have a minimum of three members and be comprised only of independent directors. In addition to satisfying the independent director requirements under Rule 4200, audit committee members must satisfy the heightened independence standards provided in section 10A(m)(3) of the Act: they must not accept any consulting, advisory, or other compensatory fee from the company other than for board service, and they must not be an affiliated person of the company. For purposes of determining whether a person is an affiliate solely by virtue of stock ownership, an audit committee member will be considered an affiliated person of the issuer if such member owns or controls, directly or indirectly, 20% or more of the company's voting stock, or such other lower threshold as the SEC may establish. Nasdaq would also consider the employee of an entity that owns or controls such securities as an affiliated person.*

*All audit committee members must be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement at the time they join the board. In addition, at least one audit committee member must have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.*

*It should be noted that, under exceptional and limited circumstances, one director who is not considered independent under Rule 4200, but meets the independence requirements of section 10A(m)(3) of the Act, may serve on the audit committee, provided that the board determines it to be in the best interests of the company and its shareholders, and the board discloses the reasons for the determination in the company's next annual proxy statement.*

* * * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq is proposing a comprehensive package of corporate governance reforms relating to NASD Rules 4200 and 4350, in order to provide greater transparency as to certain relationships that would preclude a board of directors finding that an individual can serve as an independent director and to increase the role of independent directors on board committees, in order to enhance investor confidence in the companies that list on Nasdaq.

*The Definition of Independence*

Nasdaq believes that it is important for investors to have confidence that individuals serving as independent directors do not have a relationship with the issuer that would impair their independence. Proposed interpretive material to NASD Rule 4200 states that the board has a responsibility to make an affirmative determination that no such relationships exist through the application of this rule. The rule also would specify specific relationships that would preclude a board finding of independence. The proposed rule change would expand and clarify this list of relationships. Nasdaq believes that these objectively measured relationships would provide transparency to investors and companies, facilitate uniform application of the rules, and ease administration. The rule's reference to parent or subsidiary is intended to cover

entities that are consolidated with the issuer's financial statements.

It should also be noted that additional, more stringent requirements for audit committees would be provided in NASD Rule 4350.

*Independent Board Committees*

The proposed rule would require a majority of independent directors on the issuer's board. Nasdaq believes that independent directors play an important role in assuring investor confidence. Through the exercise of independent judgment, they act on behalf of investors to maximize shareholder value in the companies they oversee, and guard against conflicts of interest. Requiring that the board be comprised of a majority of independent directors would empower such directors to more effectively carry out these responsibilities.

The proposed rule also would require regularly convened executive sessions of the independent directors. Nasdaq believes that regularly scheduled executive sessions would encourage and enhance communication among independent directors. Nasdaq contemplates that executive sessions would occur at least twice a year, and perhaps more frequently, in conjunction with regularly scheduled board meetings.

Independent director approval of executive officer compensation would also be required. This oversight would help assure that appropriate incentives are in place, consistent with the board's responsibility to maximize shareholder value. The proposed rule is intended to provide flexibility for an issuer to choose an appropriate board structure and to reduce resource burdens, while ensuring independent director control of compensation decisions.

Independent director approval would also be required for director nominations. Independent director oversight of nominations enhances investor confidence in the selection of well-qualified director nominees, as well as independent nominees as required by the rules. This rule is also intended to provide flexibility for an issuer to choose an appropriate board structure and reduce resource burdens, while ensuring that independent directors approve all nominations.

This rule would not apply in cases where the right to nominate a director legally belongs to a third party. For example, investors may negotiate the right to appoint directors in connection with an investment in the company, holders of preferred stock may be permitted to nominate or appoint directors upon certain defaults, or the issuer may be a party to a shareholder's agreement that allocates the right to nominate some directors. Because the right to nominate directors in these cases does not reside with the Company, independent director approval would not be required.

A Controlled Company would be exempt from the requirements of proposed NASD Rule 4350(c). A Controlled Company is defined in proposed NASD Rule 4350(c) as a company of which more than 50% of the voting power is held by an individual, a group or another company. A Controlled Company relying upon this exemption would be required to disclose in its annual meeting proxy statement that it is a Controlled Company and the basis for that determination. This exception recognizes that majority shareholders, including parent companies, have the right to select directors and control certain key decisions, such as executive officer compensation, by virtue of their ownership rights. In order for a group to exist for purposes of this rule, the shareholders would be required to publicly file a notice that they are acting as a group (*e.g.*, a Schedule 13D). Nasdaq emphasizes that this Controlled Company exemption would not extend to the audit committee requirements under Rule 4350.

*Audit Committee Requirements*

The proposed rule would expand the items that must be specified in the charter of the issuer's audit committee. In particular, the charter would be required to specify all audit committee responsibilities required under the Act. The rights and responsibilities as articulated in the audit committee charter empower the audit committee and enhance its effectiveness in carrying out its responsibilities. Proposed interpretive material to NASD Rule 4350 states that while the audit committee would be empowered to retain outside consultants, it would not be expected to do so routinely. Rather, it would be expected that such authority would be exercised in response to specific circumstances giving rise to an audit committee determination that such action was in the best interest of the company and its shareholders.

The proposal also would expand and tighten audit committee composition requirements. In addition to satisfying the independent director requirements under NASD Rule 4200, the proposal would require audit committee members to satisfy the heightened independence standards provided in section 10A(m)(3) of the Act, which provides that an audit committee member may not accept any consulting, advisory, or other compensatory fee from the issuer other than for board service, and may not be an affiliated person of the issuer. For purposes of determining whether a person would be an affiliate solely by virtue of stock ownership, proposed revisions to NASD Rule 4350 provide that an audit committee member would be considered an affiliated person of the issuer if such member owns or controls, directly or indirectly, 20% or more of the issuer's voting stock, or such other lower threshold as the Commission may establish.

The proposal would also tighten the current requirement that all audit committee members must be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement within a reasonable time of joining the board, by providing that they must meet these qualifications at the time they join the board. Finally, the proposal would remove the exception applicable to Small Business filers in order to further strengthen the rule.

*Timing for Effectiveness of Proposal*

Nasdaq proposes to make the proposed rule change effective as follows: Requirements that may call for an adjustment to the composition of the company's board or committees (''board composition requirements'') would be required to be implemented by the company's next annual meeting occurring after January 1, 2004. These include: NASD Rule 4200(a)(15), relating to the definition of independence; NASD Rule 4350(c)(1), requiring a majority of independent board members; NASD Rule 4350(c)(3), relating to independent director approval of executive compensation; NASD Rule 4350(c)(4), relating to independent approval of director nominations; and NASD Rule 4350(d)(2), relating to audit committee composition. This would allow companies to make necessary adjustments in the course of their regular annual meeting schedule. All other independence-related corporate governance requirements, including NASD Rule 4350(c)(2), relating to executive sessions and NASD Rule 4350(d)(1), relating to audit committee charters, would be required to be implemented six months after Commission approval.

Following Commission approval of the proposed rule change, newly listed companies would be afforded two years to comply with all board composition requirements and also would be

afforded any remaining balance of the six month grace period for compliance with all other requirements. Companies transferring from other markets with substantially similar requirements would be afforded the balance of any grace period afforded by the other market.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[5] in general, and with section 15A(b)(6) of the Act,[6] in particular, in that the proposed rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–141 and should be submitted by April 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland.**

*Deputy Secretary.*

[FR Doc. 03–6987 Filed 3–24–03; 8:45 am]

**BILLING CODE 8010–01–P**

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78o–3(b)(6).

[7] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47500; File No. SR–Phlx–2001–28]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange Relating to Who Allocates Options Trades

March 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On January 31, May 17, July 8, 2002, and March 12, 2003, the Phlx filed Amendment Nos. 1, 2, 3, and 4 to the proposed rule change, respectively.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to proposes to amend Option Floor Procedure Advice F–2 (''Advice F–2''), ''Allocation, Time Stamping, Matching and Access to Matched Trades.'' The Phlx further proposes to codify paragraph (a) of Advice F–2, as amended—regarding who allocates options trades—in the Exchange's rules, as new paragraph (vi) of Phlx rule 1014(g).

The Phlx also proposes to amend the fine schedule associated with Advice F–2, and thereby to amend its minor rule violation enforcement and reporting plan (''minor rule plan'')[4] and the Exchange's sanctioning guidelines[5] accordingly.

Finally, the Exchange is proposing corresponding amendments to Option Floor Procedure Advice F–12 (''Advice F–12''), ''Responsibility for Assigning Participation,'' to replace the term ''largest participant'' with ''Allocating Participant'' and to cross-reference that new term to new rule 1014(g)(vi). The Exchange is also proposing to change Advice F–12 by correcting the fine schedule so that it does not apply a minor rule plan fine to paragraph (d), dealing with disputes, which is a process-oriented provision, and not one which could give rise to a violation.

Below is the text of the proposed amendments to Advice F–2 and Advice F–12. Paragraph (a) of Advice F–2, as amended, would also be codified in the Phlx's rules as rule 1014(g)(vi). Deleted language is in brackets. Proposed new language is *italicized.*

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 30, 2002 (Amendment No. 1); and letters from Richard S. Rudolph, Director and Counsel, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 16, 2002, July 5, 2002, and March 12, 2003 (Amendment Nos. 2, 3, and 4). The changes made by these amendments have been incorporated into this notice.

[4] The Phlx's minor rule plan, codified in rule 970, consists of advices, such as Advice F–2, with accompanying fine schedules. Rule 19d–1 under the Act authorizes national securities exchanges to adopt minor rule plans for summary discipline and abbreviated reporting. Rule 19d–1 requires prompt filing with the Commission of any final disciplinary actions. However, minor rule plan violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting. *See also* Securities Exchange Act Release No. 44537 (July 11, 2001), 66 FR 37511 (July 18, 2001) (SR–Phlx–2001–36).

[5] *See* Securities Exchange Act Release No. 45569 (March 15, 2002), 67 FR 13397 (March 22, 2002) (SR–Phlx–2001–60).

**Option Floor Procedure Advices**

**F–2 Allocation, Time Stamping, Matching and Access to Matched Trades**

(a) In order to facilitate timely tape reporting of executed trades, it is the duty of the *persons identified below* [largest participant in a trade] to allocate, match and time stamp manually executed trades as well as to submit the matched trade to the appropriate person at the respective specialist post immediately upon execution:

*(i) in a trade involving a floor broker, the floor broker shall do so, provided that a floor broker may delegate this responsibility to the specialist (or an assistant to the specialist under the specialist's direct supervision) if the specialist agrees to accept such responsibility, and, in the event of such delegation, the specialist (or an assistant to the specialist under the specialist's direct supervision) shall do so;*

*(ii) in all other cases where the specialist is a participant (i.e., where there is no floor broker), the specialist (or an assistant to the specialist under the specialist's direct supervision) shall do so;*

*(iii) in any other case (i.e., where there is no floor broker and no specialist is involved), the largest participant shall do so (for example, where several Registered Options Traders are involved); and*

*(iv) if there is only one seller and one buyer (no floor broker and no specialist is involved), the seller shall do so (for example, where only two Registered Options Traders are involved).*

*The person responsible for trade allocation (the ''Allocating Participant'') shall, for each trade allocated by such Allocating Participant, circle his or her badge identification number on the trade tickets, identifying himself/herself as the Allocating Participant in the particular trade. If the Allocating Participant is not a participant in the trade to be allocated, he/she shall identify himself/herself by initialing the trade tickets.*

*(b)* A member or member organization initiating an options transaction whether acting as principal or agent, must report or ensure that the transaction is reported within 90 seconds of the execution to the tape. Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with just and equitable principles of trade. [If there is only one seller and one buyer, the seller is responsible.]

*(c)* Execution times must be recorded on the reverse side of one or more of the tickets to a matched trade.

([b]*d*) Once a trade has been matched and submitted for reporting at the post, the respective Specialist Unit must preserve the matched tickets for a period of not less than three years.

([c]*e*) Member access to tickets comprising a matched trade is available to any participant of that trade, as well as the respective Specialist and any Floor Official acting in his capacity as a Floor Official. Requests to review trade matches must be made with the Specialist Unit.

FINE SCHEDULE

[Implemented on a three year running calendar basis] [6]

| | |
|---|---|
| F–2 [(a–c)] *(a, c–e):* | |
| 1st Occurrence ..... | [$100] *$500* |
| 2nd Occurrence ..... | [$250] *$1,000* |
| 3rd Occurrence ..... | [$500] *$2,000* |
| 4th and Thereafter .. | Sanction is discretionary with Business Conduct Committee. |
| *F–2 (b):* | |
| *1st Occurrence .....* | *$500* |
| *2nd Occurrence .....* | *$1,000* |
| *3rd Occurrence .....* | *$2,500* |
| *4th and Thereafter ..* | *Sanction is discretionary with Business Conduct Committee.* |

**F–12 Responsibility for Assigning Participation**

(a) In each instance where a member/participant effects a transaction on the options or foreign currency options floor, he must make reasonable efforts to ensure that a meeting of the minds occurred with the contra-side as to confirming the contra-side's participation in the trade. In trades where more than one contra-side is involved, each contra-side must immediately make known to the [largest participant] *Allocating Participant (See Advice F–2 and Rule 1014(g))* his understanding as to his respective level of participation in the trade.

(b) No such contra-side who has participated in the trade shall leave the crowd until the level of his participation in the trade has been confirmed by the [largest participant] *Allocating Participant (See Advice F–2 and Rule 1014(g)).*

(c) No person in the crowd shall submit a ticket for matching on a trade when that person is not due participation in the trade.

(d) Disputes as to participation on a trade shall be resolved by a majority vote of those persons present in the crowd during the relevant time or, if not so settled, then by a Floor Official.

FINE SCHEDULE

[Implemented on a one year running calendar basis]

| | |
|---|---|
| *F–12 (a–[d]c):* | |
| 1st Occurrence ..... | $500 |
| 2nd Occurrence ..... | $1,000 |
| 3rd Occurrence ..... | $2,000 |
| 4th and Thereafter .. | Sanction is discretionary with Business Conduct Committee. |

**Obligations and Restrictions Applicable to Specialists and Registered Options Traders**

Rule 1014. (a)–(e) No change.

(g) (i)–(iv) No change.

(v) RESERVED.

*(vi) In order to facilitate timely tape reporting of executed trades, it is the duty of the persons identified below to allocate, match and time stamp manually executed trades as well as to submit the matched trade to the appropriate person at the respective specialist post immediately upon execution:*

*(i) in a trade involving a floor broker, the floor broker shall do so, provided that a floor broker may delegate this responsibility to the specialist (or an assistant to the specialist under the specialist's direct supervision) if the specialist agrees to accept such responsibility, and, in the event of such delegation, the specialist (or an assistant to the specialist under the specialist's direct supervision) shall do so;*

*(ii) in all other cases where the specialist is a participant (i.e., where there is no floor broker), the specialist (or an assistant to the specialist under the specialist's direct supervision) shall do so;*

*(iii) in any other case (i.e., where there is no floor broker and no specialist is involved), the largest participant shall do so (for example, where several Registered Options Traders are involved); and*

*(iv) if there is only one seller and one buyer (no floor broker and no specialist is involved), the seller shall do so (for example, where only two Registered Options Traders are involved).*

*The person responsible for trade allocation (the ''Allocating Participant'') shall, for each trade allocated by such Allocating Participant, circle his or her*

[6] See Securities Exchange Act Release No. 44537 (July 11, 2001), 66 FR 37511 (July 18, 2001) (SR–Phlx–2001–36).

*badge identification number on the trade tickets, identifying himself/herself as the Allocating participant in the particular trade. If the Allocating Participant is not a participant in the trade to be allocated, he/she shall identify himself/herself by initialing the trade tickets.*

## 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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to change the responsibility for options trade allocation to permit floor brokers to delegate this responsibility to the specialist.[7] The Exchange believes that this amendment should render the process of trade allocation more efficient, which in turn facilitates trade reporting. Trade allocation means, in this context, determining who is considered to be bidding or offering at a particular price, who participates in a trade, and for what size.[8]

Currently, Advice F–2 provides that in order to facilitate timely tape reporting of executed trades, it is the duty of the largest participant in a trade to allocate, match, and time stamp manually executed trades,[9] as well as to submit the matched trade to the appropriate person at the respective specialist post immediately upon execution. Further, under the current rule, if there is only one seller and one buyer, the seller is responsible.

Advice F–2 was amended in 1998 to add a trade allocation provision and to specifically place that responsibility upon the largest participant involved in the trade, who is normally the floor broker representing the original order in the trading crowd.[10] At the time of this amendment, the Exchange noted that the practice in most options crowds was for the specialist to announce trade splits. The Exchange also noted that the practice differed throughout the floor, especially when the specialist was not involved in a trade, or where a great deal of trading and quoting activity rendered specialist allocation impractical. In these situations, floor brokers assisted in allocating trades, along with their other duties respecting trade tickets. Thus, the 1998 amendment was intended to both establish who is responsible for trade allocation as well as to select the largest participant (normally, the floor broker) as a logical extension of the then-existing responsibilities for matching and time stamping.

The proposed amendment to Advice F–2 would facilitate a voluntary shift in the responsibility for allocating trades from the floor broker to, generally (subject to delegation), the specialist. The proposal would require the floor broker to allocate trades (where a floor broker is a participant to a trade), recognizing the floor broker's unique position in asking for the market and hearing the responses. At the same time, it would allow the floor broker to delegate such responsibility to the specialist (if the specialist agrees to do so), recognizing the floor broker's desire to proceed to the next trade.

That delegation, which could also be made to someone assisting the specialist under the specialist's direct supervision,[11] also acknowledges the specialist's general obligation to be present and aware of who is on what market. The Exchange anticipates that, generally, the delegation would be done across-the-board in a particular crowd, but understands that there are situations where the delegation may occur trade-by-trade, and even after a trade, in order to be responsive to the needs and relative activity level of particular specialists and floor brokers.

Since the 1998 amendment, for reasons relating to both business practices and technology, some floor brokers have found the responsibilities under the current version of Advice F–2 burdensome and impractical in many instances. Due to the changed role and reduced number of floor brokers, it may no longer make sense for floor brokers to have the sole responsibility to allocate trades on the Exchange floor. The number of orders received through the AUTOM System (not requiring a floor broker) has risen steadily, causing a declining role for floor brokers. The maximum size of orders eligible for AUTOM delivery has risen from 500 to 1,000 contracts, in response to competitive pressures.[12] At the same time, the number of options listed on the Exchange and overall volume have skyrocketed. Overall technological enhancements and changes in the operation and economics of the trading floor seem to indicate it would be more realistic for specialists, who are always present in the trading crowd, to assume this responsibility.

In trades not involving a floor broker or the specialist, the largest participant would continue to be responsible for trade allocation. For instance, where two Registered Options Traders sell to one Registered Options Trader, that one buyer would be the largest participant, and thus the allocating participant. Similarly, where there is one buyer and one seller (neither of whom is the specialist or floor broker), the seller would continue to be responsible for trade allocation. An example of this situation would be two Registered Options Traders trading with each other.

[7] On September 11, 2000, the Commission issued an Order Instituting Public Administrative Proceedings Pursuant to section 19(h) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, which requires the Exchange (among other respondent options exchanges) to implement certain undertakings. *See* Securities Exchange Act Release No. 43268 (September 11, 2000)(''Order''). One such undertaking, set forth in section IV.B.j. of the Order, requires each respondent exchange to adopt new, or amend existing, rules to include any practice or procedure, not currently authorized by rule, whereby market makers determine by agreement the spreads or option prices at which they will trade any option, or the allocation of orders in that option. Describing accurately who allocates trades is intended by the Phlx to capture in a rule activity that can be viewed as allocating trades.

[8] In a related proposal (File No. SR–Phlx–2001–39), the Phlx proposes to codify other practices relating to the allocation of trades that have developed on the Exchange's options floor, and relating to the Exchange's parity and priority rules. *See* Securities Exchange Act Release No. 47499 (March 13, 2003).

[9] Manually executed trades refers to trades other than AUTO–X trades (which are automatically executed by the AUTO–X feature of the AUTOM System, pursuant to Phlx rule 1080), which includes orders delivered by AUTOM, by the Floor Broker Order Entry System, as well as manually to the specialist. (AUTOM, an acronym for Automated Options Market, 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.)

[10] *See* Securities Exchange Act Release No. 39889 (April 20, 1998), 63 FR 23331 (August 28, 1998) (SR–Phlx–97–51).

[11] *See* Option Floor Procedure Advice F–23, which provides in pertinent part that a specialist clerk, under the supervision of a specialist, may request the crowd's market in order to update disseminated markets or ascertain parity/priority splits in relation to the execution of an order. *See* Securities Exchange Act Release No. 33125 (November 1, 1993), 58 FR 59286 (November 8, 1993), (SR–Phlx–93–17). *See also* Phlx rule 748, which requires all employees to be supervised.

[12] *See* Securities Exchange Act Release No. 43115 (August 10, 2000), 65 FR 50262 (August 17, 2000) (File No. SR–Phlx–00–35).

The proposed rule change also would require the person responsible for trade allocation in each trade (the ''Allocating Participant'') to circle his or her badge identification number on the trade tickets, thereby identifying him or herself as the Allocating Participant in the particular trade.[13] If the Allocating Participant is not a participant in the trade (such as where a Floor Broker delegated responsibility for allocation to the specialist), the Allocating Participant would be required to identify him or herself by initialing the trade tickets.[14]

The purpose of adopting new sub-paragraph (vi) of rule 1014(g) is to codify Advice F–2 expressly into Exchange rules. Certain advices are merely restatements of Phlx rules, codified into Floor Procedure Advices, not just because they may have an associated fine schedule as part of the minor rule plan, but also for the convenience of members on the trading floor.[15]

The Exchange believes that the proposed fine schedule is appropriate, in light of the low level of the existing fines (with a first violation resulting in a fine of merely $100), and the importance of the trade allocation function. The Exchange has recently increased most of its minor rule plan fine schedules.[16] The Exchange is also proposing to adopt a separate fine schedule for paragraph (b) of Advice F–2, which deals with trade reporting, because the Exchange intends to administer its surveillance and enforcement of that provision separately.[17]

2. Statutory Basis

For these reasons, the Exchange believes that its proposal is consistent with section 6(b) of the Act [18] in general and section 6(b)(5) [19] in particular in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices and protect investors and the public interest by establishing a structure for determining who allocates options trades that permits the floor broker, who would generally perform the allocation, to delegate this responsibility to the specialist. Thus, the provision should promote prompt and accurate trade allocations, which in turn facilitates prompt trade reporting.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Phlx. All submissions should refer to File No. SR–Phlx–2001–28 and should be submitted by April 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–6988 Filed 3–24–03; 8:45 am]

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[13] *See* Amendment No. 2.

[14] *See* Amendment No. 3.

[15] The advices were historically printed in pocket-sized versions for trading floor use. *See, e.g.*, Advice B–6 and Phlx rule 1014(g)(ii) and Advice A–11 and Phlx rule 1015.

[16] *See* Securities Exchange Act Release No. 44537 (July 11, 2001), 66 FR 37511 (July 18, 2001) (SR–Phlx–2001–36).

[17] The Commission notes that the proposed fine for a third violation of paragraph (b) of Advice F–2 would be $2,500, in contrast to the proposed fine of $2,000 for a third violation of other provisions of Advice F–2.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47499; File No. SR–Phlx–2001–39]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, 4, 5, and 6 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Allocation of Trades

March 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by Phlx. On May 11, 2001, February 19, 2002, May 22, 2002, November 19, 2002, December 16, 2002, and February 25, 2003, Phlx submitted Amendment Nos. 1, 2, 3, 4, 5, and 6 to the proposed rule change, respectively.[3] The Commission is publishing this

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letters from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 10, 2001 (Amendment No. 1), February 15, 2002 (Amendment No. 2), May 21, 2002 (Amendment No. 3), November 18, 2002 (Amendment No. 4), December 12, 2002 (Amendment No. 5), and February 24, 2003 (Amendment No. 6). The proposal, File No. SR–Phlx–2001–39, originally was filed to be immediately effective pursuant to section 19(b)(3)(A) of the Act. 15 U.S.C. 78s(b)(3)(A). In Amendment No. 1, Phlx amended the status of the proposed rule change to be filed pursuant to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), and requested accelerated effectiveness. In Amendment No. 2, Phlx consolidated a companion proposal, File No. SR–Phlx–2001–29, with the instant proposal to become a single proposed rule change and made several modifications. Phlx made additional changes to the rule text in Amendment No. 3 and, in Amendment No. 4, Phlx amended and restated the proposed rule change in its entirety. In Amendment No. 5, Phlx made revisions to clarify that all customer orders would be executed prior to the participation of the specialist and to delete references to Phlx rule 1064. In Amendment No. 6, Phlx made minor corrections to the rule text and narrative section of the proposal.

notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Phlx proposes to amend various provisions of Phlx rule 1014, ''Obligations And Restrictions Applicable To Specialists And Registered Options Traders,'' and to make conforming changes to Options Floor Procedure Advice (''Advice'') B–6 relating to the allocation of trades on the Exchange's Options Floor.

The text of the proposed rule change, as amended, follows.[4] Additions are italicized, and deletions are enclosed in brackets.

* * * * *

**Rule 1014. Obligations and Restrictions Applicable to Specialists and Registered Options Traders**

(a)–(f)No change.

*(g) Equity Option and Index Option Priority and Parity*

(i) (A) Exchange Rules 119 and 120 direct members in the establishment of priority of orders on the floor. In addition, equity option and index option orders of controlled accounts are required to yield priority to customer orders when competing at the same price, as described below.

For the purpose of paragraph (g) of this Rule, *''Initiating Order'' means an incoming contra-side order. ''Remainder of the Order'' means the portion of an Initiating Order that remains following the allocation of contracts to customers that are on parity, in accordance with this Rule 1014(g)(i). The Remainder of the Order shall be allocated pursuant to this Rule 1014.* [a]*A*n account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a broker-dealer. [Specialist accounts of PHLX Option Specialists, however, are not subject to yielding requirements placed upon controlled accounts by this Rule.] Customer accounts are all other accounts.

Orders of controlled accounts must yield priority to customer orders[, except that, PHLX ROTs closing in-person are not required to yield priority to orders of customer accounts].

Orders of controlled accounts are not required to yield priority to other controlled account orders[, except that when both an order of a PHLX ROT closing in-person and some other order of a controlled account are established in the crowd at the same price, and then a customer order is established at that price, the order of the controlled account must yield to the customer order while the order of the PHLX ROT closing in-person does not have to so yield].

Orders of controlled accounts, other than ROTs and Specialists market making in person, must be (1) verbally communicated as for a controlled account when placed on the floor and when represented to the trading crowd and (2) recorded as for a controlled account by appropriately circling the ''yield'' field on the floor ticket of any such order.

*Several programs described below provide an Enhanced Specialist Participation to specialists, which refers to the portion of an options trade available for allocation to the specialist on parity, including a 30% (which may actually result in a 40% or 60%) Enhanced Specialist Participation, New Unit/New Option Enhanced Specialist Participation, and New Product Enhanced Specialist Participation.*

*The Enhanced Specialist Participation is a percentage of the Remainder of the Order to which the specialist is entitled, depending upon whether (g)(ii), (iii), or (iv) applies.*

*(B) No change.*

(ii) Enhanced Specialist Participation—In equity and index option classes, when the registered specialist is on parity with a controlled account as defined in subparagraph (i) above, in accordance with Exchange Rules 119 and 120 and the number of contracts to be bought or sold is greater than five, the specialist is entitled to receive an enhanced participation of 30% of the [initiating order] *Remainder of the Order* (''Enhanced Specialist Participation''), except in the following circumstances: (1) where there is one controlled account on parity, the specialist *is entitled to* receive[s] 60% of the [initiating order] *Remainder of the Order;* or (2) where there are two controlled accounts on parity, in which case, the specialist is entitled to *receive* 40% of the [initiating order] *Remainder of the Order.* [Further, no customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist.] Enhanced Specialist Participation will be effective for: (a) all newly listed issues, (b) all index options and (c) such issues selected by the specialist and approved by the Allocation, Evaluation and Securities Committee pursuant to section (A) below.

(A) The Allocation, Evaluation and Securities Committee shall divide each equity and index option specialist's registered issues into trading volume quartiles based upon the most recent quarterly customer contract volume. Each specialist may then select 50% of the issues in each quartile to receive Enhanced Specialist Participation, rounded so that no more than 50% of the total number of such specialists' registered issues are selected. The Allocation, Evaluation and Securities Committee shall approve all specialist selections.

(B) Pursuant to Exchange Rule 509, the Allocation, Evaluation and Securities Committee shall reduce the level of Enhanced Specialist Participation authorized under this Rule to a parity level of participation in accordance with Rules 119 and 120 with respect to any options class if the specialist in such class is determined to be performing below any minimum standards or not satisfying any conditions that the Exchange may establish with respect to any options class subject to Enhanced Specialist Participation. The Committee may reinstate Enhanced Specialist Participation for a particular options class if it determines that the specialist in such class is performing at or above all established minimum standards and is satisfying all established conditions.

(C) New specialist units trading new options classes shall *be entitled to* receive an [e]*E*nhanced [parity split] *Specialist Participation* in accordance with subparagraph (iii) of this Rule. Once the specialist unit is no longer eligible to receive an [e]*E*nhanced [parity split] *Specialist Participation* in accordance with subparagraph (iii), the unit is automatically entitled to an Enhanced Specialist [p]*P*articipation in accordance with this subparagraph (ii).

(iii) New Unit/New Option Enhanced Specialist Participation—To encourage the establishment of new specialist units to trade equity and index option classes that heretofore have never been listed on the Exchange (''New Options Classes''), when such units are on parity with controlled accounts in such classes, the new specialist units will be entitled, for a period of six months following commencement of trading in New Option Classes, to the following [e]*E*nhanced [s]*S*pecialist [p]*P*articipation in a any such parity trade: (1) Fifty percent (50%) where there is one controlled account on parity and (2) Forty percent (40%) where there are two or more controlled accounts on parity[, except that no customer order

[4] The proposed changes are set forth below as they would appear in the text of Phlx rule 1014 and in the text of Options Floor Procedure Advice B–6.

which is on parity may receive a smaller participation than any other crowd participant including the specialist]. The Allocation, Evaluation and Securities Committee may extend such [e]*E*nhanced [parity split] *Specialist Participation* for each applicable option beyond the initial six month period for one additional six month period upon petition by the specialist unit and a determination by the Committee that such extension is consistent with the promotion of just and equitable principles of trade and the public interest. Additionally, the Committee after granting such extension may at any time terminate such [e]*Enhanced* [parity split] *Specialist Participation* for any particular options class if the Committee determines that such action is consistent with the promotion of just and equitable principles of trade and the public interest.

(A)–(B) No change.

(C) a new specialist unit may receive the [e]*E*nhanced [s]*S*pecialist [p]*P*articipation in a New Options Class at the time that the New Options Class commences trading.

(D) a new specialist unit will be entitled to receive the [e]*E*nhanced [s]*S*pecialist [p]*P*articipation for any additional New Options Classes so long as such options classes commence trading at a time when the unit is still entitled to receive the [e]*E*nhanced [s]*S*pecialist [p]*P*articipation on the first New Options Class it commenced trading.

(iv) New Product Enhanced Specialist Participation—When a specialist unit develops and trades a new product, such specialist [will] *is entitled to* receive an [e]*E*nhanced [split] *Specialist Participation* in that option such that when the specialist is on parity with three or more controlled accounts in the crowd, the specialist *is entitled to* receive[s] 40% of the contracts and the controlled accounts are entitled to receive the remaining 60%; when the specialist is on parity with less than three controlled accounts in the crowd, the specialist *is entitled to* receive[s] 60% of the contracts and the controlled accounts *are entitled to* receive the remaining 40%. [In either of these situations, if a customer is on parity, the customer may not receive a lesser allotment than any other crowd participant, including the specialist.] In order for the [enhancement] *Enhanced Specialist Participation* to apply, the specialist must both develop and trade a new product. If one specialist unit develops a new product idea and another specialist is allocated specialist privileges in the product, the specialist unit trading the product would not be entitled to [this split] *receive an Enhanced Specialist Participation.* The Options Committee will determine whether a specialist ''developed'' a new product.

*(v) Allocation of the Remainder of the Order Among Specialist and ROTs on Parity. After the application of Rule 1014(g)(i) to an Initiating Order, the Remainder of the Order shall be allocated by the Allocating Participant (as defined in Rule 1014(g)(vi)) as follows:*

*(A) Entitlement. ROTs and specialists on parity are entitled to their Defined Participation (as described below), subject to: (1) any Waiver, as described below; and (2) rounding, as described below.*

*(B) Size. The term ''stated size'' in relation to a crowd participant and in respect of an order shall mean:*

*(1) in the case of orders handled manually by the specialist:*

*(a) if a crowd participant (including the specialist) has actually stated a size (''Actual Size''), such crowd participant's stated size shall be his or her Actual Size;*

*(b) unless the specialist has an Actual Size, the stated size of the specialist shall be the amount (if any) by which the disseminated size exceeds the sum of (x) the aggregate size of limit orders included in the disseminated size and (y) the aggregate sizes of all ROTs who have Actual Sizes;*

*(c) the stated size of an ROT who does not have an Actual Size is zero.*

*(2) in the case of floor brokered orders, each crowd participant's stated size shall be his or her Actual Size.*

*(C) Defined Participation. Defined Participation is the portion of the Remainder of the Order to which a crowd participant is entitled. Defined Participation is determined as follows:*

*(1) in the case of a specialist entitled to an Enhanced Specialist Participation, the Enhanced Specialist Participation, up to the specialist's stated size, as set forth in sub-paragraphs (g)(ii), (iii), or (iv) of this Rule, as applicable. The specialist may decline to receive the Enhanced Specialist Participation, in which case the specialist shall be entitled to participate as one crowd participant, up to the specialist's stated size.*

*(2) except as provided in (1) above, the Defined Participation of the specialist and ROTs on parity is determined as follows:*

*(a) where all participants have equal stated sizes, their Defined Participations shall be equal;*

*(b) where participants have unequal stated sizes, the Defined Participations shall equal their Base Participations (as defined below) plus their Supplemental Participations (as defined below):*

*(i) the ''Base Participations'' of all of the participants shall equal the stated size of the smallest participant; to the extent that there remains any excess to be allocated after all participants have been allocated their Base Participations, the smallest participant shall have no Supplemental Participation, and the other participants shall have ''Supplemental Participations'' as determined under (ii) and (iii) below;*

*(ii) if the remaining stated sizes (i.e., after taking into account Base Participations) of all participants having Supplemental Participations is equal, then their Supplemental Participations shall be equal; otherwise the initial Supplemental Participations of such participants shall equal the remaining stated size of the smallest such participant; to the extent that there remains any excess to be allocated after all participants have been allocated their initial Supplemental Participations, the smallest participant shall have no further Supplemental Participation, and the other participants shall have further ''Supplemental Participations'' as determined under (iii) below; and (iii) if the remaining stated sizes (i.e., after taking into account Base Participations and prior Supplemental Participations) of all participants having further Supplemental Participations is equal, then their further Supplemental Participations shall be equal; otherwise the next Supplemental Participations of such participants shall equal the remaining stated size of the smallest such participant; to the extent that there remains any excess to be allocated after all participants have been allocated the next Supplemental Participations, the smallest participant shall have no further Supplemental Participation, and the other participants shall have successive further Supplemental Participations determined in the same manner as provided in this clause (iii).*

*The process described in clause (iii) shall be followed to determine successive further Supplemental Participations until the sum of the Defined Participations equals the amount of the Remainder of the Order.*

*(iv) (a) If the sum of the Base Participations pursuant to sub-paragraph (i) above exceeds the number of contracts remaining to be allocated, such contracts shall be divided equally among crowd participants who are entitled to receive Base Participations, subject to rounding.*

*(b) If the sum of the Supplemental Participations pursuant to sub-paragraph (ii) above exceeds the*

*number of contracts remaining to be allocated, such contracts shall be divided equally among crowd participants who are entitled to receive Supplemental Participations, subject to rounding.*

*(c) If the sum of the further Supplemental Participations pursuant to sub-paragraph (iii) above exceeds the number of contracts remaining to be allocated, such contracts shall be divided equally among crowd participants who are entitled to receive further Supplemental Participations, subject to rounding.*

*(3) Participation in additional contracts in excess of the Exchange's disseminated size among willing crowd participants shall be allocated under the applicable provisions of this Rule 1014. Notwithstanding the limitation set forth in sub-paragraph (C)(1) that limits the specialist's entitlement to his/her stated size, for all contracts executed in excess of the disseminated size, the specialist shall be entitled to receive the Enhanced Specialist Participation as set forth in sub-paragraphs (g)(ii), (iii), or (iv) of this Rule, as applicable, but not to exceed the specialist's Actual Size (if the specialist has an Actual Size) in such excess contracts.*

*(D) Waiver. (1) Any ROT or specialist may, in his or her sole discretion, offer to waive, in whole or in part, any part of a trade to which they were entitled to be allocated (an ''Offer to Waive'').*

*(a) Any Offer to Waive shall be made by stating it in a loud and audible voice to the other members of the trading crowd and the Allocating Participant.*

*(b) If the Allocating Participant has determined that the other crowd participant(s) then on parity is willing to take the number of contracts that are subject to the Offer to Waive, the Allocating Participant may (but shall not be required to), accept such Offer to Waive by (i) allocating the Remainder of the Order in accordance with this rule 1014(g)(v), taking into account the Offer to Waive; or (ii) otherwise indicating, following the execution of the Remainder of the Order, that such Offer to Waive will be accepted (in which case, it shall be referred to as a ''Waiver''). No Offer to Waive shall be an effective Waiver until the Allocating Participant has allocated the order or otherwise indicated that it is accepted.*

*(c)(i) In the case of an option which is not subject to an Enhanced Specialist Participation, as set forth in sub-paragraphs (g)(ii)–(iv) of this Rule, if the specialist or an ROT effects a Waiver in the manner provided above, the number of contracts to which such specialist or ROT is entitled under this Rule 1014(g)(v) shall be reduced by the number of contracts waived, and the entitlements of the other participants on parity shall be determined by redistributing the waived number of contracts to willing participants (including the specialist) in accordance with this Rule 1014(g)(v).*

*(ii) In the case of an option which is subject to an Enhanced Specialist Participation, as set forth in sub-paragraphs (g)(ii)–(iv) of this Rule, and one or more ROTs effect Waivers of their entire entitlements (''Total Waivers''), the number of ROTs with whom the specialist is deemed to be on parity for purposes of determining the Enhanced Specialist Participation shall be reduced by the number of ROTs effecting Total Waivers and the following additional rules shall apply:*

*(A) in the event that one or more ROTs on parity with the specialist effect a Total Waiver of their respective entitlements such that the specialist is on parity with three or more ROTs, the number of contracts to be allocated to each crowd participant shall be determined as provided in sub-paragraph (c)(i) above, provided that the maximum number of contracts to be allocated to the specialist shall be that which the specialist would be entitled to receive under Rule 1014(g)(ii)–(iv), as if the specialist had been on parity with three ROTs.*

*(B) in the event that one or more ROTs on parity with the specialist effect a Total Waiver of their respective entitlements such that the specialist is on parity with two ROTs, the number of contracts to be allocated to each crowd participant shall be determined as provided in sub-paragraph (c)(i) above, provided that the maximum number of contracts to be allocated to the specialist shall be that which the specialist would be entitled to receive under Rule 1014(g)(ii)–(iv) as if the specialist had been on parity with two ROTs.*

*(C) In the event that one or more ROTs on parity with the specialist effect a Total Waiver of their respective entitlements such that the specialist is on parity with one ROT, the number of contracts to be allocated to each crowd participant shall be determined as provided in sub-paragraph (c)(i) above, provided that the maximum number of contracts to be allocated to the specialist shall be that which the specialist would be entitled to receive under Rule 1014(g)(ii)–(iv) as if the specialist had been on parity with one ROT. In no event shall any non-waiving ROT be required to participate in fewer contracts than he/she would have received absent the Waiver(s).*

*(iii) Partial Waiver. In the case of an option which is subject to an Enhanced Specialist Participation, in the event that one or more ROTs effect a Waiver of a portion of their respective entitlements, but not a Total Waiver, in the manner provided above (a ''Partial Waiver''), the number of contracts to be allocated to each crowd participant shall be determined as provided in sub-paragraph (c)(i) above, provided that the specialist shall not be entitled to receive a number of contracts that is greater than 40% of the Remainder of the Order except in the situation referred to in the following sentence, unless all remaining crowd participants on parity have waived their entitlements or have been satisfied. In the case of the specialist being on parity with only one ROT, the specialist shall not be entitled to receive a number of contracts that is greater than 60% of the Remainder of the Order unless all remaining crowd participants on parity have waived their entitlements or have been satisfied.*

*In no event shall any non-waiving ROT be required participate in fewer contracts than he/she would have received absent the Partial Waiver(s).*

*(iv) In no event shall two or more crowd participants enter into any agreement regarding the number of contracts to be waived by any crowd participant (i.e., subject to the provisions of subparagraph (D)(1)(b) above, any decision by a crowd participant to waive all or a portion of such crowd participant's entitlement must be an individual decision, and not the subject of an agreement among crowd participants).*

*(E) Rounding. In situations where the allocation of contracts pursuant to this Rule result in fractional amounts of contracts to be allocated to crowd participants, the number of contracts to be allocated shall be rounded in a fair and equitable manner.*

*(F) Just and Equitable Principles of Trade. (1) It shall be considered conduct inconsistent with just and equitable principles of trade for a member: (a) to allocate initiating orders other than in accordance with this rule 1014; (b) to enter into any agreement with another member concerning allocation of trades; or (c) to harass, intimidate or coerce any member to enter into any Waiver, or to make or refrain from making any complaint or appeal.*

*(2) A pattern or practice of waiving all or a portion of a crowd participant's entitlement, with the result that such crowd participant receives no allocation or a lesser allocation than he or she would otherwise have been entitled to, may be considered conduct inconsistent*

*with just and equitable principles of trade.*

*(G) Notwithstanding the first sentence of Rule 1014(g)(i), neither Rule 119(b) and (c) concerning precedence based on the size of bids on parity, nor Rule 120 (insofar as it incorporates those provisions by reference) shall apply to the allocation of orders covered by this Rule 1014(g)(v).*

* * * * *

*B–6 Priority of Options Orders for Equity Options and Index Options by Account Type (Equity Option and Index Option Only)*

(i) Exchange Rules 119 and 120 direct members in the establishment of priority of orders on the floor. In addition, equity option and index option orders of controlled accounts are required to yield priority to customer orders when competing at the same price, as described below.

For the purposes of this Advice, ''*Initiating Order*'' *means an incoming contra-side order.* ''*Remainder of the Order*'' *means the portion of an Initiating Order that remains following the allocation of contracts to customers that are on parity, in accordance with this Rule 1014(g)(i). The Remainder of the Order shall be allocated pursuant to this Rule 1014.* [a]*A*n account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a broker-dealer. [Specialist accounts of PHLX Option Specialists, however, are not subject to yielding requirements placed upon controlled accounts by this Rule.] Customer accounts are all other accounts.

**Section A**

(i) Orders of controlled accounts must yield priority to customer orders[, except that, PHLX ROTs closing in-person are not required to yield priority to orders of customer accounts].

(ii) Orders of controlled accounts are not required to yield priority to other controlled account orders[, except that when both an order of a PHLX ROT closing in-person and some other order of a controlled account are established in the crowd at the same price, and then a customer order is established at that price, the order of the controlled account must yield to the customer order while the order of the PHLX ROT closing in-person does not have to so yield].

**Section B**

Orders of controlled accounts, other than ROTs and Specialists market making in-person, must be—

(1) verbally communicated as for a controlled account when placed on the floor and when represented to the trading crowd and

(2) recorded as for a controlled account by appropriately circling the ''yield'' field on the floor ticket of any such order.

In any instance where an order is misrepresented in this fashion due to factors which give rise to the concern that it was the result of anything other than an inadvertent error, the Exchange may determine to bypass the fine schedule below and refer the incident to the Business Conduct Committee for possible disciplinary proceedings in accordance with those procedures set forth under the Exchange's Disciplinary Rule 960.

**Section C**

*Several programs described below provide an Enhanced Specialist Participation to specialists, which refers to the portion of an options trade available for allocation to the specialist on parity, including a 30% (which may actually result in a 40% or 60%) Enhanced Specialist Participation, New Unit/New Option Enhanced Specialist Participation, and New Product Enhanced Specialist Participation.*

*The Enhanced Specialist Participation is a percentage of the Remainder of the Order to which the specialist is entitled, depending upon whether (g)(ii), (iii), or (iv) applies.*

Enhanced Specialist Participation—In equity and index option classes, when the registered specialist is on parity with a controlled account as defined in subparagraph (i) above, in accordance with Exchange Rules 119 and 120 and the number of contracts to be bought or sold is greater than five, the specialist is entitled to receive an enhanced participation of 30% of the [initiating order] *Remainder of the Order* (''Enhanced Specialist Participation''), except in the following circumstances: (1) where there is one controlled account on parity, the specialist *is entitled* to receive[s] 60% of the [initiating order] *Remainder of the Order*; or (2) where there are two controlled accounts on parity, in which case, the specialist is entitled to *receive* 40% of the [initiating order] *Remainder of the Order.* [Further, no customer order which is on parity may receive a smaller participation than any other crowd participant including the specialist.] Enhanced Specialist Participation will be effective for: (a) all newly listed issues, (b) all index options and (c) such issues selected by the specialist and approved by the Allocation, Evaluation and Securities Committee pursuant to section (A) below.

**Section D**

New Product Enhanced Specialist Participation '' When a specialist unit develops and trades a new product, such specialist [will] *is entitled* to receive an[e]Enhanced [split] *Specialist Participation* in that option such that when the specialist is on parity with three or more controlled accounts in the crowd, the specialist *is entitled* to receive[s] 40% of the contracts and the controlled accounts *are entitled* to receive the remaining 60%; when the specialist is on parity with less than three controlled accounts in the crowd, the specialist *is entitled* to receive[s] 60% of the contracts and the controlled accounts *are entitled* to receive the remaining 40%. [In either of these situations, if a customer is on parity, the customer may not receive a lesser allotment than any other crowd participant, including the specialist.] In order for the [enhancement] *Enhanced Specialist Participation* to apply, the specialist must both develop and trade a new product. If one specialist unit develops a new product idea and another specialist is allocated specialist privileges in the product, the specialist unit trading the product would not be entitled to [this split] *receive an Enhanced Specialist Participation.* [The Options Committee will determine whether a specialist split.] The Options Committee will determine whether a specialist ''developed'' a new product.

**Section E**

*Allocation of the Remainder of the Order Among Specialist and ROTs on Parity. After the application of this Advice to an Initiating Order, the Remainder of the Order shall be allocated by the Allocating Participant (as defined in Rule 1014(g)(vi)) as follows:*

*(A) Entitlement. ROTs and specialists on parity are entitled to their Defined Participation (as described below), subject to: (1) any Waiver, as described below; and (2) rounding, as described below.*

*(B) Size. The term ''stated size'' in relation to a crowd participant and in respect of an order shall mean:*

*(1) In the case of orders handled manually by the specialist:*

*(a) if a crowd participant (including the specialist) has actually stated a size (''Actual Size''), such crowd participant's stated size shall be his or her Actual Size;*

*(b) unless the specialist has an Actual Size, the stated size of the specialist shall be the amount (if any) by which*

*the disseminated size exceeds the sum of (x) the aggregate size of limit orders included in the disseminated size and (y) the aggregate sizes of all ROTs who have Actual Sizes;*

*(c) the stated size of an ROT who does not have an Actual Size is zero.*

*(2) in the case of floor brokered orders, each crowd participant's stated size shall be his or her Actual Size.*

*(C) Defined Participation. Defined Participation is the portion of the Remainder of the Order to which a crowd participant is entitled. Defined Participation is determined as follows:*

*(1) in the case of a specialist entitled to an Enhanced Specialist Participation, the Enhanced Specialist Participation, up to the specialist's stated size, as set forth in C and D of this Advice, as applicable. The specialist may decline to receive the Enhanced Specialist Participation, in which case the specialist shall be entitled to participate as one crowd participant, up to the specialist's stated size.*

*(2) except as provided in (1) above, the Defined Participation of the specialist and ROTs on parity is determined as follows:*

*(a) where all participants have equal stated sizes, their Defined Participations shall be equal;*

*(b) where participants have unequal stated sizes, the Defined Participations shall equal their Base Participations (as defined below) plus their Supplemental Participations (as defined below):*

*(i) the ''Base Participations'' of all of the participants shall equal the stated size of the smallest participant; to the extent that there remains any excess to be allocated after all participants have been allocated their Base Participations, the smallest participant shall have no Supplemental Participation, and the other participants shall have ''Supplemental Participations'' as determined under (ii) and (iii) below;*

*(ii) if the remaining stated sizes (i.e., after taking into account Base Participations) of all participants having Supplemental Participations is equal, then their Supplemental Participations shall be equal; otherwise the initial Supplemental Participations of such participants shall equal the remaining stated size of the smallest such participant; to the extent that there remains any excess to be allocated after all participants have been allocated their initial Supplemental Participations, the smallest participant shall have no further Supplemental Participation, and the other participants shall have further ''Supplemental Participations'' as determined under (iii) below; and (iii) if the remaining stated sizes (i.e., after taking into account Base Participations and prior Supplemental Participations) of all participants having further Supplemental Participations is equal, then their further Supplemental Participations shall be equal; otherwise the next Supplemental Participations of such participants shall equal the remaining stated size of the smallest such participant; to the extent that there remains any excess to be allocated after all participants have been allocated the next Supplemental Participations, the smallest participant shall have no further Supplemental Participation, and the other participants shall have successive further Supplemental Participations determined in the same manner as provided in this clause (iii).*

*The process described in clause (iii) shall be followed to determine successive further Supplemental Participations until the sum of the Defined Participations equals the amount of the Remainder of the Order.*

*(iv) (a) If the sum of the Base Participations pursuant to sub-paragraph (i) above exceeds the number of contracts remaining to be allocated, such contracts shall be divided equally among crowd participants who are entitled to receive Base Participations, subject to rounding.*

*(b) If the sum of the Supplemental Participations pursuant to sub-paragraph (ii) above exceeds the number of contracts remaining to be allocated, such contracts shall be divided equally among crowd participants who are entitled to receive Supplemental Participations, subject to rounding.*

*(c) If the sum of the further Supplemental Participations pursuant to sub-paragraph (iii) above exceeds the number of contracts remaining to be allocated, such contracts shall be divided equally among crowd participants who are entitled to receive further Supplemental Participations, subject to rounding.*

*(3) Participation in additional contracts in excess of the Exchange's disseminated size among willing crowd participants shall be allocated under the applicable provisions of this Advice. Notwithstanding the limitation set forth in sub-paragraph (C)(1) that limits the specialist's entitlement to his/her stated size, for all contracts executed in excess of the disseminated size, the specialist shall be entitled to receive the Enhanced Specialist Participation as set forth in sections C and D of this Advice, as applicable, but not to exceed the specialist's Actual Size (if the specialist has an Actual Size) in such excess contracts.*

*(D) Waiver. (1) Any ROT or specialist may, in his or her sole discretion, offer to waive, in whole or in part, any part of a trade to which they were entitled to be allocated (an ''Offer to Waive'').*

*(a) Any Offer to Waive shall be made by stating it in a loud and audible voice to the other members of the trading crowd and the Allocating Participant.*

*(b) If the Allocating Participant has determined that the other crowd participant(s) then on parity is willing to take the number of contracts that are subject to the Offer to Waive, the Allocating Participant may (but shall not be required to), accept such Offer to Waive by (i) allocating the Remainder of the Order in accordance with this Advice, taking into account the Offer to Waive; or (ii) otherwise indicating, following the execution of the Remainder of the Order, that such Offer to Waive will be accepted (in which case, it shall be referred to as a ''Waiver''). No Offer to Waive shall be an effective Waiver until the Allocating Participant has allocated the order or otherwise indicated that it is accepted.*

*(c) (i) In the case of an option which is not subject to an Enhanced Specialist Participation, as set forth in sections C and D of this Advice, if the specialist or an ROT effects a Waiver in the manner provided above, the number of contracts to which such specialist or ROT is entitled under this Advice shall be reduced by the number of contracts waived, and the entitlements of the other participants on parity shall be determined by redistributing the waived number of contracts to willing participants (including the specialist) in accordance with this Advice.*

*(ii) In the case of an option which is subject to an Enhanced Specialist Participation, as set forth in sections C and D of this Advice, and one or more ROTs effect Waivers of their entire entitlements (''Total Waivers''), the number of ROTs with whom the specialist is deemed to be on parity for purposes of determining the Enhanced Specialist Participation shall be reduced by the number of ROTs effecting Total Waivers and the following additional rules shall apply:*

*(A) In the event that one or more ROTs on parity with the specialist effect a Total Waiver of their respective entitlements such that the specialist is on parity with three or more ROTs, the number of contracts to be allocated to each crowd participant shall be determined as provided in sub-paragraph (c)(i) above, provided that the maximum number of contracts to be allocated to the specialist shall be that which the specialist would be entitled to receive under this Advice, as if the*

*specialist had been on parity with three ROTs.*

*(B) In the event that one or more ROTs on parity with the specialist effect a Total Waiver of their respective entitlements such that the specialist is on parity with two ROTs, the number of contracts to be allocated to each crowd participant shall be determined as provided in sub-paragraph (c)(i) above, provided that the maximum number of contracts to be allocated to the specialist shall be that which the specialist would be entitled to receive under this Advice as if the specialist had been on parity with two ROTs.*

*(C) In the event that one or more ROTs on parity with the specialist effect a Total Waiver of their respective entitlements such that the specialist is on parity with one ROT, the number of contracts to be allocated to each crowd participant shall be determined as provided in sub-paragraph (c)(i) above, provided that the maximum number of contracts to be allocated to the specialist shall be that which the specialist would be entitled to receive under this Advice as if the specialist had been on parity with one ROT. In no event shall any non-waiving ROT be required to participate in fewer contracts than he/she would have received absent the Waiver(s).*

*(iii) Partial Waiver. In the case of an option which is subject to an Enhanced Specialist Participation, in the event that one or more ROTs effect a Waiver of a portion of their respective entitlements, but not a Total Waiver, in the manner provided above (a ''Partial Waiver''), the number of contracts to be allocated to each crowd participant shall be determined as provided in sub-paragraph (c)(i) above, provided that the specialist shall not be entitled to receive a number of contracts that is greater than 40% of the Remainder of the Order except in the situation referred to in the following sentence, unless all remaining crowd participants on parity have waived their entitlements or have been satisfied. In the case of the specialist being on parity with only one ROT, the specialist shall not be entitled to receive a number of contracts that is greater than 60% of the Remainder of the Order unless all remaining crowd participants on parity have waived their entitlements or have been satisfied.*

*In no event shall any non-waiving ROT be required participate in fewer contracts than he/she would have received absent the Partial Waiver(s).*

*(iv) In no event shall two or more crowd participants enter into any agreement regarding the number of contracts to be waived by any crowd participant (i.e., subject to the provisions of sub-paragraph (D)(1)(b) above, any decision by a crowd participant to waive all or a portion of such crowd participant's entitlement must be an individual decision, and not the subject of an agreement among crowd participants).*

*(E) Rounding. In situations where the allocation of contracts pursuant to this Rule result in fractional amounts of contracts to be allocated to crowd participants, the number of contracts to be allocated shall be rounded in a fair and equitable manner.*

*(F) Just and Equitable Principles of Trade. (1) It shall be considered conduct inconsistent with just and equitable principles of trade for a member: (a) to allocate initiating orders other than in accordance with this Advice; (b) to enter into any agreement with another member concerning allocation of trades; or (c) to harass, intimidate or coerce any member to enter into any Waiver, or to make or refrain from making any complaint or appeal.*

*(2) A pattern or practice of waiving all or a portion of a crowd participant's entitlement, with the result that such crowd participant receives no allocation or a lesser allocation than he or she would otherwise have been entitled to, may be considered conduct inconsistent with just and equitable principles of trade.*

*(G) Notwithstanding the first sentence of this Advice, neither Rule 119(b) and (c) concerning precedence based on the size of bids on parity, nor Rule 120 (insofar as it incorporates those provisions by reference) shall apply to the allocation of orders covered by this Advice.*

*Fine Schedule (Implemented on a Two-Year Running Calendar Basis) B–6*

Section A:

No fine applicable. Matters subject for review by the Business Conduct Committee.

Section B:

1st Occurrence—$500.00

2nd Occurrence—$1,000.00

3rd Occurrence—$2,000.00

4th Occurrence and thereafter—Sanction is discretionary with Business Conduct Committee.

Section C:

Fine not applicable.

Section D:

Fine not applicable.

Section E:

Fine not applicable.

* * * * *

## 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, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to codify certain practices that have developed respecting the allocation of trades on the Exchange's options floor and the Exchange's parity and priority rule, Phlx rule 1014, ''Obligations And Restrictions Applicable To Specialists And Registered Options Traders.'' The proposed rule change also would make certain other changes to Phlx rule 1014 that would generally clarify option trade allocation procedures and make them easier to apply.[5]

As a general principle, in an auction market for standardized options like Phlx and other national securities exchanges operating a floor-based options marketplace, the first participant to quote the best price (highest bid or lowest offer) is entitled to priority, which refers to the right to participate fully in a contra-side order before anyone else. Phlx rules 119 and 120 and rule 1014(g) are the general rules concerning establishment of parity and priority in the execution of orders

[5] On September 11, 2000, the Commission issued an order in relation to settling *In the Matter of Certain Activities of Options Exchanges,* which requires the Exchange (among other respondent options exchanges) to implement certain undertakings. Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) (''Order''). One such undertaking is to adopt new or amend existing rules to include any practice or procedure, not currently authorized by rule, whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option, or the allocation of orders in that option class. The proposed rule change, as amended, is intended to respond to this undertaking.

on the options floor.[6] In addition to addressing time priority, these rules provide that when bids or offers at the same price are made simultaneously, or when the order of time in which bids or offers were made cannot be determined, all such bids and offers will be on parity. Thus, parity means that none of the market participants bidding or offering at the best price has rights over the other members at that price in terms of trade participation. Although not specifically stated in Phlx rules currently, members on parity are generally entitled to receive equal shares of the contra-side participation.[7]

An ''Enhanced Specialist Participation'' is one type of exception to the general parity rules, allocating to the specialist a greater than equal share of the portion of an order that is divided among the specialist and any ''controlled accounts'' that are on parity.[8] The Exchange currently has several Enhanced Specialist Participation programs, embodied in Phlx rule 1014(g) and described below. These programs establish specified percentages as the Enhanced Specialist Participation, depending on the category of option.

i. *Enhanced Specialist Participation Programs.* The Enhanced Specialist Participation provided under rule 1014(g)(ii) currently entitles the specialist to 30% of the portion of the initiating order,[9] divided among the specialist and controlled accounts when three or more controlled accounts are on parity with the specialist and more than five contracts are to be bought or sold.[10] This is generally known as the ''30% Enhanced Specialist Participation'' or the ''30% split.'' If two controlled accounts are on parity with the specialist, the specialist is entitled to receive 40%, and if only one controlled account is on parity with the specialist, the specialist is entitled to receive 60%.

Another Enhanced Specialist Participation program on Phlx, originally adopted in May 1994 and embodied in current Phlx rule 1014(g)(iii), is designed to encourage the establishment of new specialist units to trade options classes that have never been listed on the Exchange. For a period of six months following the commencement of trading in such a new options class, the new specialist unit is entitled to 50% of an order when one controlled account is on parity with the specialist, and 40% when two or more controlled accounts are on parity with the specialist.[11]

On July 1, 1999, still another enhanced participation program, the ''New Product Enhanced Specialist Participation,'' was adopted.[12] Under Phlx rule 1014(g)(iv), a specialist who develops and trades a new product is entitled to receive an Enhanced Specialist Participation of 40% when three or more controlled accounts are on parity, and 60% if fewer than three controlled accounts are on parity. Currently, in either of these situations, if a customer is on parity, the customer may not receive a smaller participation than any other crowd participant, including the specialist.[13]

The Exchange represents that the purpose of these programs is to attract and retain highly capitalized specialist units who can capture order flow for the Exchange. Because the specialist unit is currently the key party responsible for marketing to attract order flow in particular options, the Exchange seeks to provide the appropriate encouragement to specialists to plan, invest in, and effect marketing strategies. Therefore, the Exchange believes that these programs provide specialists with the appropriate incentive to create more depth and liquidity. Phlx states that the Commission has regularly acknowledged the need for well-capitalized specialist units, burdens and costs borne by specialists, and how the Enhanced Specialist Participation is intended to compensate specialists for these costs and burdens.[14]

(ii) *Clarifying Amendments.* The Exchange proposes to make clarifying amendments to Phlx rule 1014(g) to state what portion of a trade a specialist on parity with other crowd participants ''is entitled to'' throughout the Enhanced Specialist Participation portions of the rule. Most of the provisions in Phlx rule 1014(g)(ii) state the Enhanced Specialist Participation in the form of an entitlement, but the provisions that erroneously do not are

[6] Phlx rule 1067, which states that the highest bid and the lowest offer shall have precedence in all cases, does not address parity situations, nor does it address size precedence; thus, it is consistent with the proposal. Other Exchange rules, including Phlx rules 1017 and 1019, as well as Advices A–12 and A–14, deal with priority/parity on the opening.

[7] The Exchange notes that option orders that are automatically executed by the Exchange's AUTO-X system are generally subject to a separate allocation system known as the ''Wheel.'' Therefore, the Enhanced Specialist Participation programs described in this section apply only to non-AUTO-X trades. Non-AUTO-X trades include manually executed trades such as orders delivered by the AUTOM System, by the Floor Broker Order Entry (''FBOE'') System as well as manually to the specialist. *See infra* note 26 and Securities Exchange Act Release No. 41524 (June 14, 1999), 64 FR 33127 (June 21, 1999) (SR–Phlx–99–11) (adopting the FBOE). *See also* Securities Exchange Act Release No. 45927 (May 15, 2002), 67 FR 36289 (May 23, 2002) (SR–Phlx–2001–24).

The Exchange further notes that rules relating to its ''ROT Access'' system, in which specialists and Registered Options Traders (''ROTs'') may place price improving limit orders and matching orders directly onto the limit order book via electronic interface with AUTOM, contain Special Allocation rules particular to orders executed against such price improving and matching orders. *See* Securities Exchange Act Release No. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2002) (SR–Phlx–2002–04).

[8] A controlled account is currently defined as ''any account controlled by or under common control with a broker-dealer.'' *See* Phlx rule 1014(g)(i). Thus, the definition of controlled account includes the account of an ROT. *See also* Securities Exchange Act Release No. 45114 (November 28, 2001), 66 FR 63277 (December 5, 2001) (SR–Phlx–2001–38) (re-defining ''controlled account''). For other examples of exceptions to the general parity principle, *see* Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778 (SR–Phlx–00–01) at IV.B.2.

[9] The proposal would specify that the specialist is entitled to receive an Enhanced Specialist Participation as a percentage of the ''Remainder of the Order.''

[10] The 30% enhanced participation when three or more controlled accounts are on parity was approved by the Commission on April 18, 2000. *See* Securities Exchange Act Release No. 42700 (April 18, 2000), 65 FR 24246 (April 25, 2000) (SR–Phlx–99–39). The Enhanced Specialist Participation in Phlx rule 1014(g)(ii) was originally approved by the Commission as a one-year pilot program for equity options. *See* Securities Exchange Act Release No. 34606 (August 26, 1994), 59 FR 45741 (September 2, 1994) (SR–Phlx–94–12). It was later expanded to include index options. *See* Securities Exchange Act Release No. 35028 (November 30, 1994), 59 FR 63151 (December 7, 1994) (SR–Phlx–94–57). The pilot rule provided for a ''two-for-one'' split when the specialist was on parity with any number of controlled accounts, allocating to the specialist two contracts for every one allocated to a controlled account. The program was later revised to provide for the current 40% allocation when two controlled accounts are on parity and 60% allocation when one is on parity. *See* Securities Exchange Act Release No. 35429 (March 1, 1995), 60 FR 12802 (March 8, 1995) (SR–Phlx–94–59). The pilot was renewed unaltered on three occasions. *See* Securities Exchange Act Release Nos. 36122 (August 18, 1995), 60 FR 44530 (August 28, 1995) (SR–Phlx–95–54); 37254 (August 5, 1996), 61 FR 42080 (August 13, 1996) (SR–Phlx–96–29); and 38924 (August 11, 1997), 62 FR 44160 (August 19, 1997) (SR–Phlx–97–36). It was thereafter extended for another period with certain modifications. *See* Securities Exchange Act Release No. 39401 (December 4, 1997), 62 FR 65300 (December 11, 1997) (SR–Phlx–97–48). The pilot was approved as a permanent program on July 1, 1999. *See* Securities Exchange Act Release No. 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999) (SR–Phlx–98–56).

[11] *See* Securities Exchange Act Release No. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994) (SR–Phlx–93–29).

[12] *See* Securities Exchange Act Release No. 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999) (SR–Phlx–98–56).

[13] The instant proposal would afford the customer absolute priority over all controlled accounts by requiring controlled accounts (that would otherwise have priority or be on parity) to yield to customer accounts. *See infra* Section A.(iii). Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Ira L. Brandriss, Division, Commission, on December 30, 2002 (''Telephone conversation with Phlx'').

[14] *See, e.g.,* Securities Exchange Act Release No. 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999) (SR–Phlx–98–56).

proposed to be corrected. Specifically, the Exchange proposes to state in Phlx rule 1014(g)(ii) that where there is one controlled account on parity, the specialist is entitled [15] to receive 60% of the Remainder of the Order after customer orders that are on parity at the Exchange's best bid/offer, in accordance with rule 1014(g)(i).

In Phlx rule 1014(g)(ii)(C), which cross-references another Enhanced Specialist Participation program (discussed in the next sentence), the Exchange proposes to state that new specialist units trading new options classes shall *be entitled to* receive an Enhanced Specialist Participation. Lastly, in the New Product Enhanced Specialist Participation provisions of Phlx rule 1014(g)(iv), the proposal would correct that entire provision to state that when a specialist unit develops and trades a new product, such specialist *is entitled to* receive an Enhanced Specialist Participation in that option such that, when the specialist is on parity with three or more controlled accounts in the crowd, the specialist *is entitled to* receive 40% of the contracts and the controlled accounts *are entitled to* receive the remaining 60%; when the specialist is on parity with less than three controlled accounts in the crowd, the specialist *is entitled to* receive 60% of the contracts and the controlled accounts *are entitled to* receive the remaining 40%.[16] The Exchange represents that all of these provisions were originally intended to be written in the permissive form, as evidenced by other types of Enhanced Specialist Participation programs.[17] Thus, Phlx states, the ''entitlement'' is not mandatory.

Second, the Exchange proposes to add a reference to the Enhanced Specialist Participation programs and an explanation of how the Enhanced Specialist Participation is calculated. Specifically, the Exchange proposes to expressly state in Phlx rule 1014(g)(i) that several programs provide an Enhanced Specialist Participation to specialists. These programs include a 30% (or, in certain situations, 40% or 60%) Enhanced Specialist Participation, New Unit/New Option Enhanced Specialist Participation,[18] and New Product Enhanced Specialist Participation.[19] The purpose of expressly listing these programs in Phlx rule 1014(g)(i) is to provide an introduction for ease of reference.

The Exchange also proposes to better define how the Enhanced Specialist Participation would be calculated by stating that the Enhanced Specialist Participation is a percentage of the Remainder of the Order to which the specialist is entitled, depending upon whether Phlx rule 1014 (g)(ii), (iii), or (iv) applies. ''Remainder of the Order'' is proposed to be defined in order to be clear as to which portion of an ''Initiating Order'' (which is also proposed to be defined) the proposed trade allocation rules would apply.

(iii) *Customer Priority.* Under the current structure of Phlx rule 1014(g), in applying the Enhanced Specialist Participation, when an incoming order arrives on the floor and only the specialist and controlled accounts are on parity, the specialist is entitled to the specified percentage of the order before the controlled accounts divide the rest. However, when a customer order also is being represented in the crowd at the same bid or offer as the specialist and controlled accounts, other rules currently must be taken into account. Specifically, Phlx rule 1014(g)(i) currently provides that orders of controlled accounts must yield priority to customer orders, but that specialists and ROTs closing in person are currently not required to yield priority to customer orders. Thus, currently, a specialist and a ROT closing in person are not required to yield to a customer order represented in the trading crowd while other controlled accounts are. Nonetheless, pursuant to the Enhanced Specialist Participation provisions, currently a customer may not receive a smaller participation than any trading crowd participant, including an ROT closing in person.[20]

The Exchange is proposing to delete the clause in Phlx rule 1014(g)(i) that allows specialists and ROTs closing in-person to be on parity with customer orders, and to make conforming changes to Phlx rules 1014(g)(ii), (iii), and (iv). The instant proposal would thus require the accounts of specialists and ROTs closing in-person to yield priority to all customer accounts. The purpose of this provision is to make the Exchange more attractive to customer orders.[21]

(iv) *Proposed New Rule 1014(g)(v).* At this time, Phlx proposes to adopt new paragraph (g)(v) to Phlx rule 1014 to codify and detail how trade allocation functions for non-AUTO–X orders [22] subject to allocation under Phlx rule 1014(g).[23]

In order to explain how options trade allocation functions, it is necessary first to define and discuss the concepts of ''stated size'' and ''Defined Participation.''

a. *Stated Size.* Currently, in situations in which the specialist handles AUTOM-delivered [24] orders manually, the individual crowd participants do not in all cases quote a specific size prior to the execution of such an order, but rather the entire crowd is responsible for the disseminated price up to the disseminated size. The proposed rule change would, with one exception [25] require, on a trade-by-trade

[15] The current rule text uses the phrase, ''the specialist is entitled to'' when referring to the 30% Enhanced Specialist Participation when three or more controlled accounts are on parity, and to the 40% Enhanced Specialist Participation when two controlled accounts are on parity. The Exchange represents that originally in the rule text submitted as File No. SR–Phlx–97–48, the portion of the text concerning the case where one controlled account is on parity also used the phrase, ''the specialist is entitled to 60%''; and in SR–Phlx–98–56, the text of the rule was inadvertently changed to ''receives 60%.'' Cf. Securities Exchange Act Release Nos. 39401 (December 4, 1997), 62 FR 65300 (December 11, 1997) (SR–Phlx–97–48); and 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999) (SR–Phlx–98–56). Telephone conversation with Phlx.

[16] *See* Securities Exchange Act Release No. 41588 (July 1, 1999), 64 FR 37185 (July 9, 1999) (SR–Phlx–98–56).

[17] The Exchange states that even Enhanced Specialist Participation programs proposed after the new product enhanced specialist participation used the language ''is entitled to.'' *See* Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) (SR–Phlx–2001–01) at Exhibit A, proposing to adopt a 50% Enhanced Specialist Participation and an 80% Enhanced Specialist Participation).

[18] *See* Securities Exchange Act Release No. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994) (SR–Phlx–93–29).

[19] Enhanced specialist participation programs, which determine the portion of an options trade available for allocation to the specialist on parity with controlled accounts, including the mechanical operation of all existing enhanced specialist programs, are described more fully in Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) (SR–Phlx–00–01). In that proposal, Phlx attempted to codify a similar introductory provision, but that proposed rule change was withdrawn.

[20] *See* Phlx rule 1014(g)(ii).

[21] *See* Amendment No. 5.

[22] For a discussion of situations in which incoming orders would not be eligible for automatic execution via AUTO–X, *see* Securities Exchange Act Release No. 45927 (May 15, 2002), 67 FR 36289 (May 23, 2002) (SR–Phlx–2001–24).

[23] *See supra* note 7.

[24] 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.

[25] Proposed Phlx rule 1014(g)(v)(C)(3) would entitle the specialist to receive the Enhanced Specialist Participation for contracts executed in excess of the Exchange's disseminated size if the specialist does not state a size regarding such excess

Continued

basis, each crowd participant to state a size for which they are firm at any time prior to an execution.

In the context of this proposed rule change, ''stated size'' means, in the case of orders handled manually by the specialist (for example, in the case of an order that is delivered via AUTOM but is not eligible for execution via AUTO–X[26]) if a crowd participant (including the specialist) has actually stated a size (''Actual Size''), such crowd participant's stated size shall be his or her Actual Size.

Unless the specialist has an Actual Size, the stated size of the specialist shall be the amount (if any) by which the disseminated size[27] exceeds the sum of (x) the aggregate size of limit orders included in the disseminated size and (y) the aggregate sizes of the quotations at the disseminated price of all ROTs who have Actual Sizes.

The proposal further would provide that the stated size of an ROT who does not have an Actual Size is zero. Therefore, in the case of an order handled manually by the specialist and that is subject to allocation under Phlx rule 1014(g), if an ROT does not actually state the size for which he or she is firm at the disseminated price, such ROT would not be entitled to receive any contracts in such an order.

The proposed rule would also provide that, in the case of floor-brokered orders, each crowd participant's stated size shall be his or her Actual Size. Thus, when a floor broker enters a crowd and asks for a market, the specialist and ROTs would be required to state, along with the price for which they are firm, an Actual Size for which they are firm in order to be entitled to be allocated contracts resulting from the execution of the order. Again, in the case of orders represented in the crowd by a floor broker, if a crowd participant does not have an Actual Size, such crowd participant would not be entitled to receive any contracts.

Once the stated size of the specialist and ROTs has been established under proposed Phlx rule 1014(g)(v)(B), the allocation of contracts would take place in accordance proposed sub-paragraph (g)(v)(C), ''Defined Participation.''

b. *Defined Participation.* Under the proposal, ''Defined Participation'' would mean the portion of the Remainder of the Order to which a crowd participant is entitled.

In the case of a specialist entitled to an Enhanced Specialist Participation, the Defined Participation would mean the Enhanced Specialist Participation, up to the specialist's stated size. This means that if the specialist's stated size is for a number of contracts that is less than the size of the Enhanced Specialist Participation, the specialist would be entitled to receive a number of contracts that is limited to the specialist's stated size, and not the full Enhanced Specialist Participation *unless* the situation described in Phlx rule 1014(g)(v)(C)(3) applies.[28]

The Defined Participation for other crowd participants on parity would mean, where all participants have equal stated sizes, an equal share of the Remainder of the Order to be allocated after the specialist receives the Enhanced Specialist Participation, if applicable. Where participants have unequal stated sizes, the Defined Participations would equal their ''Base Participations,'' defined as the stated size of the smallest participant (provided that, if the sum of all Base Participations would exceed the number of contracts in the Remainder of the Order, then the Remainder of the Order would be divided equally among crowd participants on parity, subject to rounding) plus their ''Supplemental Participations.'' After the allocation of the Base Participation, the smallest participant would not be entitled to receive a Supplemental Participation, since that participant would have been allocated contracts equaling such participant's stated size. The other crowd participants who are on parity and who would be entitled to receive additional contracts would be entitled to receive Supplemental Participations.

Supplemental Participations would be equal to the remaining stated size, after the allocation of the Base Participation, of the smallest remaining participant entitled to receive such a Supplemental Participation (provided that, if the sum of all initial Supplemental Participations would exceed the number of contracts remaining to be allocated, then such contracts would be divided equally among crowd participants on parity, subject to rounding). If the remaining stated sizes of all participants entitled to receive initial Supplemental Participations is equal, then their initial Supplemental Participations would be equal. The allocation of the Supplemental Participations would continue in this manner until the number of contracts to be allocated is exhausted.

The proposed rule would provide that the specialist may decline to receive the Enhanced Specialist Participation, in which case the specialist would be entitled to participate as one crowd participant, up to (*i.e.*, limited by) the specialist's stated size. The Exchange believes that this limitation should provide incentives for specialists to bid for and offer options contracts reflecting their true size, resulting in greater transparency in the Exchange's markets.

When a market or marketable limit order is received with a size greater than the Exchange's disseminated size, some crowd participants may be willing to execute a larger size than the disseminated size.[29] Where the Remainder of the Order is greater than the portion of the disseminated size that is attributable to the specialists and ROTs,[30] the proposed rule change would provide that participation in additional contracts in excess of such size among willing crowd participants shall be allocated under the otherwise applicable provisions of Phlx rule 1014.[31]

Specifically, once the disseminated size is executed and allocated among crowd participants on parity, any crowd participants who wish to execute additional contracts in excess of the disseminated size may participate in a

contracts. If the specialist states a size prior to the execution of such excess contracts, the specialist's entitlement would be limited by that size. *See* subparagraph b. below.

[26] Phlx represents that other examples of orders handled manually by the specialist include orders delivered by the Floor Broker Order Entry system and orders placed manually on the limit order book.

[27] Currently, Phlx rule 1082(a)(ii) defines ''disseminated size'' as, respecting options subject to new technology (the ''new Auto-Quote'') and options subject to a proprietary quoting system provided for in Phlx rule 1080.02 (''Specialized Quote Feed''), at least the sum of limit orders at the Exchange's disseminated price. The specialist and crowd may determine to disseminate a size greater than the sum of limit orders. For instance, the disseminated size may include additional size disseminated by the specialist, one or more ROTs, or the total crowd size.

[28] *See* discussion, *infra* page 16.

[29] Phlx rule 1082(e), Firm Quotations, provides that, if responsible brokers or dealers receive an order to buy or sell a listed option at the disseminated price in an amount greater than the disseminated size (for customer orders) or the quotation size (for broker-dealer orders), such responsible broker or dealer shall, within thirty (30) seconds of receipt of the order, (i) execute the entire order at the disseminated price (or better), or (ii) execute that portion of the order equal to the disseminated size (in the case of a customer order) or the quotation size (in the case of a broker-dealer order) at the disseminated price (or better), and revise its bid or offer. The Exchange filed with the Commission on October 4, 2002, a proposed rule change to codify the situation in which responsible brokers or dealers elect to execute a number of contracts greater than the disseminated size but not necessarily the size of the entire order. *See* File No. SR–Phlx–2002–60.

[30] Phlx defines disseminated size as, with respect to the disseminated price for any quoted options series, at least the sum of limit orders; however, the proposal would permit the specialist and crowd to disseminate a size greater than the sum of the limit orders. *See* Securities Exchange Act Release No. 46325, (August 8, 2002), 67 FR 53376 (August 15, 2002) (approving File No. SR–Phlx–2002–15).

[31] Telephone conversation with Phlx.

''second round'' of bidding for or offering additional contracts in excess of the disseminated size (the ''excess contracts''). This subset of willing crowd participants would be entitled to participate under the same rules applicable to the Remainder of the Order. Once all crowd participants have been satisfied in the original allocation up to the disseminated size, the ''second round'' would constitute a new parity situation respecting the willing crowd participants in the excess contracts. The excess contracts would be allocated among those crowd participants who wish to participate in additional contracts, in accordance with the proposed rule. Therefore, if the specialist is a willing participant in the excess contracts, the specialist would be entitled to receive an Enhanced Specialist Participation in such excess contracts.

Proposed Phlx rule 1014(g)(v)(C)(3) is intended to address this situation where an order is received via AUTOM and handled manually by the specialist for a number of contracts greater than the Exchange's disseminated size, and the specialist executes the entire order manually prior to stating a size. The proposed rule would provide that, if the specialist has no Actual Size, the specialist would nonetheless be entitled to receive the Enhanced Specialist Participation for all contracts executed in excess of the disseminated size. The proposed rule limits the specialist's entitlement if the specialist has an Actual Size. In such a situation, the specialist would be entitled to receive the Enhanced Specialist Participation, but not to exceed the specialist's Actual Size in such excess contracts.

c. *Waiver.* The proposal is not intended to require, without exception, that crowd participants be allocated the number of contracts to which they would be entitled.[32] The proposal would allow crowd participants, in their sole discretion, to offer to waive, in whole or in part, any part of a trade to which they were entitled to be allocated (an ''Offer to Waive''), by stating so in a loud and audible voice to the other members of the trading crowd and the Allocating Participant.[33] In structuring the waiver provisions, the Exchange represents that it has incorporated basic contract principles,[34] including communication of an offer, acceptance, and revocation.[35]

For example, a crowd participant may make an Offer to Waive in situations in which hedging transactions become difficult or cumbersome due to lack of availability or liquidity in the underlying stock; additionally, a crowd participant may make an Offer to Waive to accommodate the execution of a particularly large sized order on the Exchange by larger crowd participants, or to accommodate a crowd participant closing out a position. At the same time, the proposed rule change would provide that a pattern or practice of waiving all or a portion of a crowd participant's entitlement may be considered conduct inconsistent with just and equitable principles of trade.[36]

If the Allocating Participant determines that the other crowd participant(s) then on parity is (are) willing to take the number of contracts that are subject to the Offer to Waive, the Allocating Participant may (but would not be required to), accept such Offer to Waive by (i) allocating the Remainder of the Order, taking into account the Offer to Waive, in accordance with proposed Phlx rule 1014(g)(v), or (ii) otherwise indicating, following the execution of the Initiating Order, that such Offer to Waive will be accepted.

The proposed rule addresses both a Total Waiver, in which a crowd participant effects a Waiver of his or her entire entitlement, and a Partial Waiver, in which a crowd participant effects a Waiver of a portion of his or her respective entitlement but not a Total Waiver. If a crowd participant effects a Total Waiver or a Partial Waiver, the number of contracts to which such participant would otherwise be entitled would be reduced by the number of contracts waived. The entitlements of the other participants on parity (and who have not effected a Total or Partial Waiver) would be determined by redistributing the waived number of contracts to willing participants (including the specialist) based on the Defined Participation.[37]

d. *Waiver and the Enhanced Specialist Participation.* The proposed rule would provide that, in the case of an option which is subject to an Enhanced Specialist Participation, and one or more ROTs effect Total Waivers leaving the specialist on parity (after giving effect to such Total Waivers) with three or more ROTs, the Enhanced Specialist Participation to which the specialist would be entitled is as if the specialist had been on parity with three ROTs; similarly, if one or more ROTs effect Total Waivers leaving the specialist on parity (after giving effect to such Total Waivers) with two or more ROTs, the Enhanced Specialist Participation to which the specialist would be entitled is as if the specialist had been on parity with two ROTs, and if one or more ROTs effect Total Waivers leaving the specialist on parity (after giving effect to such Total Waivers) with one ROT, the Enhanced Specialist Participation to which the specialist would be entitled is as if the specialist had been on parity with one ROT. In no event, however, would a specialist that is on parity with one ROT be entitled to receive a number of contracts that is greater than the Enhanced Specialist Participation, unless the one ROT has waived his entitlement or has been satisfied.

The proposed rule would make clear that, in no event would any non-waiving ROT be required to participate in fewer contracts than he/she would have received absent the Waiver(s). The purpose of this provision is to ensure that the ROT that remains on parity with the specialist does not receive fewer contracts than such ROT would have received if not for the Waivers.

e. *Partial Waiver.* The proposed rule would provide that, respecting options subject to the Enhanced Specialist Participation, in the event that one or more ROTs on parity with the specialist effect a Partial Waiver, the specialist would not be entitled to receive a number of contracts that is greater than 40% of the Remainder of the Order or, in the case of the specialist being on

[32] Telephone conversation with Phlx.

[33] Options Floor Procedure Advice (''Advice'') F–2 currently provides that, generally, the largest participant allocates the trade. The Exchange has proposed to modify Phlx rule 1014(g) and Advice F–2 governing who allocates trades. *See* Securities Exchange Act Release No. 47500 (March 13, 2003) (notice of File No. SR–Phlx–2001–28).

[34] *See* Corbin, Contracts section 1515 and 13 Pa. C.S.A. section 1102 (corresponding to section 1–102 of the Uniform Commercial Code) regarding variation by agreement, stating the basic principles of commercial and contract law that parties may generally waive rights or benefits to which they would otherwise be entitled. In order to ensure that no waiver is coerced, the Exchange is proposing to codify that it would be inconsistent with ''just and equitable principles of trade'' for a participant to harass, coerce or intimidate another participant to waive any rights.

[35] The Exchange notes that waiver also appears in disciplinary and membership rules, as well as in the Act. Under the disciplinary processes of the exchanges, there is a right to a hearing, which can be waived. *See, e.g.*, Amex rule 590(f) and Chicago Stock Exchange Article XII, rule 9. *See also* CBOE rule 3.9(b) permitting clearing firms to waive the membership posting period. The proposed provisions do not implicate the anti-waiver provisions of section 29(a) of the Act, 15 U.S.C. 78cc(a), which aims to prevent the waiver of the application of U.S. securities laws in certain situations where fraud is involved.

[36] *See* proposed rule 1014(g)(v)(F)(2).

[37] The proposal does not contemplate, and would not allow, a crowd participant to waive his/her entitlement to receive a given number of contracts to designate that the contracts subject to the Waiver be allocated to any other specific crowd participant or participants.

parity with only one ROT, 60%, unless all other ROTs on parity have waived their entitlements or have received a number of contracts equal to their remaining size after the Partial Waiver(s). The proposal would provide, however, for the reasons stated above, that in no event shall a ROT be required to participate in fewer contracts than he/she would have received absent the Partial Waiver(s).

f. *Other Provisions.* The proposal would provide that, in situations where the allocation of contracts result in fractional amounts of contracts to be allocated to crowd participants, the number of contracts to be allocated would be rounded in a fair and equitable manner.

The proposal would also provide that it shall be considered conduct inconsistent with just and equitable principles of trade for a member: (a) To allocate initiating orders other than in accordance with Phlx rule 1014; (b) to enter into any agreement with another member concerning allocation of trades; or (c) to harass, intimidate or coerce any member to enter into or revoke any Waiver, or to make or refrain from making any complaint or appeal. A pattern or practice of waiving all or a portion of a crowd participant's entitlement, with the result that such crowd participant receives no allocation or a lesser allocation than he or she would otherwise have been entitled to, may be considered conduct inconsistent with just and equitable principles of trade. The Exchange notes that although it is proposing to expressly reference ''just and equitable principles of trade'' [38] in this proposed rule,[39] it does not intend to create an inference, with respect to other Exchange rules that do not contain such an express reference, that violations of such rules could not in appropriate instances also violate just and equitable principles of trade. The Exchange may, in the case of other Exchange rules where there is no express reference to ''just and equitable principles of trade,'' nonetheless determine that a violation of such other rules also constitutes conduct inconsistent with just and equitable principles of trade.[40] The Exchange believes that this provision of the proposed rule is consistent with the requirement in the Order to promptly stop any practice or procedure relating to the allocation of orders if neither it nor a related practice or procedure that would supercede the existing practice or procedure has been submitted for approval or is not already authorized by rule.

Finally, the proposal would provide that, notwithstanding the first sentence of Phlx rule 1014(g)(i), neither Phlx rule 119(b) and (c) concerning precedence based on the size of bids at parity, nor Phlx rule 120 (insofar as it incorporates those provisions by reference) shall apply to the allocation of orders covered by this Phlx rule 1014(g)(v).

2. Statutory Basis

The Exchange believes that the proposed rule change would codify existing practices concerning options trade allocation where ROTs and specialists are on parity, and would provide a fair process for trade allocation among floor traders (specialists and ROTs). It would provide for the waiver of minimum trade allocation entitlements where appropriate while establishing a process that would help ensure fair and equitable trade allocation in such case.[41] This process would include, for instance, the requirement that Offers to Waive be vocalized and accepted. Further, the Exchange believes that trade allocation is, in part, a process in the functioning of an auction market. In its role as a facility for options trading, the Exchange believes that the approach proposed herein is appropriate and consistent with the Act.[42] The Exchange believes that the approach represents a codification of practices that have developed as the options markets have evolved and changed.

In addition to being necessary and appropriate, the Exchange believes that its approach has certain benefits and results that would foster and achieve the objectives of section 6(b)(5) of the Act.[43] Specifically, proposed Phlx rule 1014(g)(v) expressly would provide a fair and equitable mechanism to allocate trades among floor traders on parity.[44] Such a mechanism is necessary to the functioning of a trading crowd in an auction market and, thus, to the maintenance of deep, liquid and orderly options markets.

The Exchange states that its ability to attract order flow hinges to a great extent on its ability to execute a large number of trades of various sizes, including very large trades, efficiently and expeditiously. The Exchange states that trading crowds facilitate those executions far better than could individual market makers, because a trading crowd usually represents much more liquidity than an individual market maker. The proposed rule would codify certain trade allocation entitlements, and the ability of crowd participants to waive such entitlements where appropriate, but not to the extent that such waiver becomes a pattern or practice. This, in turn, would maximize smooth functioning of trading crowds and efficient executions.[45]

Phlx believes that the proposed rule should promote fair and orderly markets by: (1) Establishing clear trade allocation rules; and (2) specifying when and how floor traders may decline to receive any part of a trade to which they otherwise would have been entitled.

For these reasons, the Exchange believes that its proposal is consistent with section 6(b) of the Act,[46] in general, and section 6(b)(5) of the Act,[47] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by codifying a trade allocation approach that best facilitates fair and orderly markets.

[38] *See* Phlx rule 707.

[39] Other Exchange rules expressly reference just and equitable principles of trade. *See, e.g.*, Phlx rules 1015(b), 1042.02 and 1051(a).

[40] The lack of express reference in other Phlx rules should not be construed as waiving the ability to make a violation of Phlx rule 707 co-exist with any other violation, depending on the facts and circumstances of the case. The Exchange believes that a violation of the existing parity/priority provisions of its rules could be a violation of just and equitable principles of trade and could be subject to disciplinary action as such. In addition, a violation of Phlx rule 1014(g)(v), for instance, can be in and of itself a stand-alone violation.

[41] Telephone conversation with Phlx.

[42] The Exchange notes that the Commission has previously acknowledged that granting benefits like the Enhanced Specialist Participation is within the business judgment of the Exchange, as long as such advantages do not restrain competition and do not harm investors. *See* Securities Exchange Act Release No. 42700 (April 18, 2000), 65 FR 24246 (April 25, 2000) (SR–Phlx–99–39); see also Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) (publishing for notice and comment File No. SR–Phlx–00–01).

[43] 15 U.S.C. 78f(b)(5).

[44] The Exchange believes that self-regulatory organizations (''SROs'') should be afforded the broadest latitude to adopt trading rules that its governing bodies determine are most appropriate to the needs of the marketplace and its competitive position, and notes that, in its recent proposal to promulgate new rule 19b–6 under the Act, SROs would be permitted to file ''trading rules'' as effective upon filing, without staff review or Commission order, unless such a trading rule would ''make fundamental structural changes to the market.'' For purposes of the proposed rule, the term ''trading rule'' includes rules governing member trading * * * such as rules governing * * * priority of orders, bids and offers *See* proposed rule 19b–6(b)(6) and (g)(1) at Securities Exchange Act Release No. 43860 (January 19, 2001), 65 FR 8912 (February 5, 2001). The Commission notes that it has not taken final action on proposed rule 19b–6.

[45] Telephone conversation with Phlx.

[46] 15 U.S.C. 78f(b).

[47] 15 U.S.C. 78f(b)(5)

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–Phlx–2001–39 and should be submitted by April 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[48]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–6990 Filed 3–24–03; 8:45 am]

BILLING CODE 8010–01–P

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

**DATES:** Submit comments on or before May 27, 2003.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Carol Fendler, Director, Office of Licensing and Program Standards, Small Business Administration, 409 3rd Street SW., Suite 6300, Washington, DC 20416

**FOR FURTHER INFORMATION CONTACT:** Carol Fendler, Director, 202–205–7559 or Curtis B. Rich, Management Analyst, 202–205–7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* Licenses Application.

*Form No's:* 2181, 2182 & 2183.

*Description of Respondents:* Small Business Investment Companies.

*Annual Responses:* 210.

*Annual Burden:* 12,000.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 03–6962 Filed 3–24–03; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed the Week Ending March 14, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST–2003–14685.

*Date Filed:* March 11, 2003.

*Parties:* Members of the International Air Transport Association.

*Subject:*

PTC2 EUR 0497 dated March 11, 2003.

Mail Vote 273—TC2 Europe.

Resolution 010S—TC2 Within Europe Special Passenger Amending Resolution.

Intended effective date: March 22, 2003.

*Docket Number:* OST–2003–14703.

*Date Filed:* March 13, 2003.

*Parties:* Members of the International Air Transport Association.

*Subject:*

PTC2 EUR 0499 dated March 14, 2003.

Mail Vote 282—Resolution 010v. TC2 Within Europe Special Passenger Amending Resolution from France to Europe. Intended effective date: March 28, 2003.

**Dorothy Y. Beard,**

*Chief, Docket Operations & Media Management, Federal Register Liaison.*

[FR Doc. 03–7082 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 14, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–1996–1642.

*Date Filed:* March 12, 2003.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* April 2, 2003.

*Description:* Application of Continental Airlines, Inc., pursuant to 49 U.S.C. 41102 and subpart B, requesting renewal of its Route 729

[48] 17 CFR 200.30–3(a)(12).

certificate authorizing it to provide scheduled foreign air transportation of persons, property, and mail between Cleveland, OH and London, England, and to combine this authority with its other certificate and exemption authority.

**Dorothy Y. Beard,**

*Chief, Docket Operations & Media Management, Federal Register Liaison.*

[FR Doc. 03–7081 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket OST–02–14071]**

### Application of Westward Airways, Inc. for Certificate Authority

**AGENCY:** Department of Transportation.

**ACTION:** Notice of order to show cause (Order 2003–3–10).

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Westward Airways, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property and mail using aircraft having 9 passenger seats or less.

**DATES:** Persons wishing to file objections should do so no later than April 1, 2003.

**ADDRESSES:** Objections and answers to objections should be filed in Docket OST–02–14071 and addressed to the Department of Transportation Dockets (M–30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Mr. Howard Serig, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4822.

Dated: March 19, 2003.

**Read C. Van De Water,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 03–7083 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Third Party War Risk Liability Insurance

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of extension of aviation insurance.

**SUMMARY:** This notice contains the text of a memo from the Secretary of Transportation to the President regarding the extension of the provision of aviation insurance coverage for U.S. flag commercial air carrier service in domestic and international operations.

**DATES:** Dates of extension from December 16, 2002 through February 13, 2003.

**FOR FURTHER INFORMATION CONTACT:** Helen Kish, Program Analyst, APO–3, or Eric Nelson, Program Analyst, APO–3, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone 202–267–9943 or 202–267–3090. Or online at the FAA Insurance Web site: *http://insurance.faa.gov.*

**SUPPLEMENTARY INFORMATION:** On February 13, 2003, the Secretary of Transportation authorized a 60-day extension of aviation insurance provided by the Federal Aviation Administration as follows:

**Memorandum To the President**

Pursuant to the authority delegated to me in paragraph (3) of Presidential Determination No. 01–29 of September 23, 2001, I have extended that determination to allow for the provision of aviation insurance and reinsurance coverage for U.S. flag commercial air carrier service in domestic and international operations for an additional 60 days.

Pursuant to section 44306(b) of Chapter 443 of 49 U.S.C., Aviation Insurance, the period for provision of insurance shall be extended from February 14, 2003, through April 14, 2003.

/s/Norman Y. Mineta

*Affected Public:* Air Carriers who currently have Third Party War-Risk Liability Insurance with the Federal Aviation Administration.

Issued in Washington, DC, on March 18, 2003.

**Nan Shellabarger,**

*Deputy Director, Office of Aviation Policy and Plans.*

[FR Doc. 03–7075 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2003–12]**

### Petitions for Exemption; Summary of Petitions Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before April 14, 2003.

**ADDRESSES:** Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14566 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Jan Thor ((425) 227–2127), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins ((202) 267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800

Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on March 19, 2003.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Petitions for Exemption**

*Docket No.:* FAA–2003–14566.

*Petitioner:* Boeing Netjets Charter Company, L. L. C.

*Section of 14 CFR Affected:* 14 CFR 25.813(c).

*Description of Relief Sought:* Boeing Netjets Charter Company, L. L. C. (BNJC, L. L. C.), an on-demand 14 CFR part 135 charter operator, which also conducts operations under 14 CFR part 91, has requested that it be allowed to engage in for-hire charter operations with a door between passenger compartments on the BBJ airplane (Boeing Model 737–700IGW) equipped with an executive interior with 19 or less passenger seats. This relief is similar to relief previously granted to the Boeing Company under Exemption Nos. 6820 and 6820A for airplanes not operated for hire or common carriage.

[FR Doc. 03–7071 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 03–07–C–00–ESC To Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Delta County Airport, Escanaba, MI

**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 Delta County Airport under the provisions of the 49 U.S.C. 401176 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before April 24, 2003.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road Belleville, Michigan 48111. The application may be reviewed in person at this location.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard Severson, Airport Manager, Delta County Airport at the following address: Delta County Airport, 3300 Airport Road, Escanaba, Michigan 49829.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Delta County under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Arlene B. Draper, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7282). 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 Delta County Airport under the provisions of the 49 U.S.C. 401117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 5, 2003, the FAA determined that the application to impose and use the revenue form a PFC submitted by Delta County 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, not later than June 27, 2003.

The following is a brief overview of the application.

*Proposed charge effective date:* March 1, 2004.

*Proposed charge expiration date:* December 31, 2006.

*Level of the proposed PFC for new impose/use:* $4.50.

*Total estimated PFC revenue:* $54,500.

*Brief description of proposed projects:*

*Impose and Use at the $4.50:* Expand Terminal Parking Lot and Relocate Airport Access Road.

*Use Only at the $3.00 Level:* Construct Runway Safety Area for Runway 9.

Class or classes of air carriers, which the public agency has requested to be required to collect PFCs: Air Taxi and Charters.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Delta County.

Issued in Des Plaines, Illinois, on March 17, 2003.

**Mark McClardy,**

*Manager, Planning and Programming Branch, Airports Division, Great Lakes Region*

[FR Doc. 03–7076 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket Nos. AB–565 (Sub–No. 14X) and AB–55 (Sub–No. 629X)]**

### New York Central Lines, LLC—Abandonment Exemption and CSX Transportation, Inc.—Discontinuance of Service Exemption—in Montgomery and Schenectady Counties, NY

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuance of Service* for NYC to abandon and CSXT to discontinue service over approximately 6.3 miles of railroad from milepost QGW 159.6 to milepost QGW 165.9, between South Amsterdam in Montgomery County and Rotterdam Junction in Schenectady County, NY. The line traverses United States Postal Service Zip Codes 12010 and 12150.

NYC and CSXT have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on April 24, 2003, unless

stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 4, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 14, 2003, with: Surface Transportation Board, 1925 K Street NW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representative: Natalie S. Rosenberg, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemptions are void *ab initio.*

NYC and CSXT have filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 28, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NYC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NYC's filing of a notice of consummation by March 25, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: March 18, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–6923 Filed 3–24–03; 8:45 am]

**BILLING CODE 4915–00–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Capital Asset Realignment for Enhanced Services (CARES) Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Capital Asset Realignment for Enhanced Services (CARES) Commission will meet on April 2–4, 2003, at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202. The sessions on April 2–4 will begin at 8:30 a.m. each day and end by 4 p.m. on April 2, by 5 p.m. on April 3, and by 12 noon on April 4. The meetings are open to the public.

The purpose of the Commission is to conduct an external assessment of VA's capital asset needs and to assure that stakeholder and beneficiary concerns are fully addressed. The Commission will consider recommendations prepared by VA's Under Secretary for Health, veterans service organizations, individual veterans, Congress, medical school affiliates, VA employees, local government entities, community groups and others. Following its assessment, the Commission will make specific recommendations to the Secretary of Veterans Affairs regarding the realignment and allocation of capital assets necessary to meet the demands for veterans health care services over the next 20 years.

The April meeting is the third meeting of the Commission. On the morning of April 2, there will be a detailed briefing and discussion of how the Market Planning Template was applied in the solution planning process. On the afternoon of April 2, a status report on the reviews of the CARES Model will be presented. Also, on the afternoon of April 2 and continued on April 3, there will be briefings on the issues facing nursing and medical school affiliations with VA facilities, such as the impact of changes in resident work hour requirements, and the interplay with VA Community Based Outpatient Clinics. On April 3, there will also be a briefing and discussion of the CARES Planning Initiatives and adherence to Planning Guidance. On April 4, the Commission will receive briefings from stakeholders and other governmental offices.

No time will be allocated at these meetings for receiving oral presentations from the public. However, interested persons may either attend or file statements with the Commission. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to: Department of Veterans Affairs, CARES Commission (OOCARES), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing additional information should contact Mr. Richard E. Larson, Executive Director, CARES Commission, at (202) 501–2000.

Dated: March 18, 2003.

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. 03–7005 Filed 3–24–03; 8:45 am]

**BILLING CODE 8320–01–M**

## DEPARTMENT OF VETERANS AFFAIRS

### President's Task Force To Improve Health Care Delivery for Our Nation's Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is scheduled for Wednesday, April 9, 2003, beginning at 9 a.m. and adjourning at 5 p.m. The meeting will be held in the Horizon Ballroom of the Ronald Reagan Building International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is open to the public.

The purpose of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is to:

(a) Identify ways to improve benefits and services for Department of Veterans Affairs (VA) beneficiaries and Department of Defense (DoD) military retirees who are also eligible for benefits from VA, through better coordination of the activities of the two departments;

(b) Identify opportunities to remove barriers that impede VA and DoD coordination, including budgeting processes, timely billing, cost accounting, information technology, and reimbursement; and

(c) Identify opportunities through partnership between VA and DoD, to maximize the use of resources and infrastructure, including buildings, information technology and data sharing systems, procurement of supplies, equipment and services.

The morning and afternoon sessions will be a discussion of format and issues for the Final Report to the President.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties can provide written comments to Mr. Dan Amon, Communications Director, President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia 22209.

Dated: March 18, 2003.

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. 03–7006 Filed 3–24–03; 8:45 am]

**BILLING CODE 8320–01–M**

## DEPARTMENT OF VETERANS AFFAIRS

### Voluntary Service National Advisory Committee, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the annual meeting of the Department of Veterans Affairs Voluntary Service National Advisory Committee (NAC) will be held at the Radisson Hotel City Centre, 31 West Ohio Street, Indianapolis, Indiana, on April 30–May 3, 2003. The meeting sessions are scheduled from 6 p.m. until 8 p.m. on April 30; from 8:30 a.m. until 4:30 p.m. on May 1 and 2; and from 9 a.m. until 4 p.m. on May 3, with a closing program at 6 p.m. that day. The meeting is open to the public.

The committee, comprised of 61 national voluntary organizations advises the Secretary, through the Under Secretary for Health, on the coordination and promotion of volunteer activities within VA health care facilities. The primary purposes of this meeting are: To provide for committee review of volunteer policies and procedures; to accommodate full and open communications between the organizations, representatives and the Voluntary Service Office and field staff; to provide educational opportunities geared towards improving volunteer programs with special emphasis on methods to recruit, retain, motivate and recognize volunteers; and to approve committee recommendations.

The April 30 session will involve opening ceremonies, remarks by several VA and local officials and a keynote address by the VA Deputy Secretary. The May 1 session will feature presentations on the VA Voluntary Service and Veterans Canteen Service and four educational workshops on the Stories of Service with Digital Clubhouse Network, Tampa VAMC Junior Intern Program, Student Volunteers Making A Difference and Recruitment—Back to the Basics and Resolving Conflict. On May 2, the business session will include voting on recommendations, a keynote address from the Acting Under Secretary for Memorial Affairs, several awards recognizing exceptional volunteer service and a continuation of the educational workshops. The James H. Parke Memorial Scholarship Luncheon will be held to honor an outstanding youth volunteer, with Lt. General Carol A. Mutter, U.S. Marine Corps (Retired) serving as keynote speaker. The May 3 session will conclude with remarks from the National Executive Committee Vice Chairman and Chairman of the National Advisory Committee during a Volunteer Recognition Dinner.

No time will be allocated at this meeting for receiving oral presentations from the public. However, interested persons may either attend or file statements with the Committee. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to: Ms. Laura Balun, Administrative Officer, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420. Individuals interested in attending are encouraged to contact Ms. Balun at (202) 273–8952.

Dated: March 18, 2003

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. 03–7007 Filed 3–24–03; 8:45 am]

**BILLING CODE 8320–01–M**

# Corrections

Federal Register

Vol. 68, No. 57

Tuesday, March 25, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### Agricultural Policy Advisory Committee for Trade and the Agricultural Technical Advisory Committees for Trade; Reestablishment, Establishment, and Nominations

*Correction*

In notice document 03–6794 beginning on page 13665 in the issue of Thursday, March 20, 2003, make the following correction:

On page 13665, in the first column, under **FOR FURTHER INFORMATION CONTACT**, in the ninth line, ''7829'' should read, ''6829''.

[FR Doc. C3–6794 Filed 3–24–03; 8:45 am]

BILLING CODE 1505–01–D

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 202

**[Regulation B; Docket No. R–1008]**

### Equal Credit Opportunity

*Correction*

In rule document 03–5666 beginning on page 13144 in the issue of Tuesday, March 18, 2003 make the following correction:

### PART 202—[CORRECTED]

On page 13184, in appendix C to part 202, in the first column, the heading **Notification Forms** is corrected to read as follows:

**Appendix C to Part 202—Sample Notification Forms**

[FR Doc. C3–5666 Filed 3–24–03; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Parts 4, 113, and 178

**[T.D. 03–14]**

**RIN 1515–AC58**

### Deferral of Duty on Large Yachts Imported for Sale

*Correction*

In rule document 03–6759 beginning on page 13623 in the issue of Thursday, March 20, 2003, make the following corrections:

1. On page 13624, in the third column, in the first full paragraph, in the sixth line from the bottom, ''and'' should read, '''and''.

2. On the same page, in the same column, in the same paragraph, in the second line from the bottom, ''section'' should read, ''section'''.

[FR Doc. C3–6759 Filed 3–24–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
March 25, 2003

# Part II

# Department of the Treasury

## Customs Service

## 19 CFR Parts 10 and 163

## Implementation of the Andean Trade Promotion and Drug Eradication Act; Proposed Rule

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Parts 10 and 163**

**[T.D. 03–16]**

**RIN 1515–AD19**

## Implementation of the Andean Trade Promotion and Drug Eradication Act

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Interim regulations; solicitation of comments.

**SUMMARY:** This document sets forth interim amendments to the Customs Regulations to implement the trade benefit provisions for Andean countries contained in Title XXXI of the Trade Act of 2002. The trade benefits under Title XXXI, also referred to as the Andean Trade Promotion and Drug Eradication Act (the ATPDEA), apply to Andean countries specifically designated by the President for ATPDEA purposes. The ATPDEA trade benefits involve the entry of specific apparel and other textile articles free of duty and free of any quantitative restrictions, limitations, or consultation levels, the extension of duty-free treatment to specified non-textile articles normally excluded from duty-free treatment under the Andean Trade Preference Act (ATPA) program if the President finds those articles to be not import-sensitive in the context of the ATPDEA, and the entry of certain imports of tuna free of duty and free of any quantitative restrictions. The regulatory amendments contained in this document reflect and clarify the statutory standards for the trade benefits under the ATPDEA and also include specific documentary, procedural and other related requirements that must be met in order to obtain those benefits.

**DATES:** Interim rule effective March 25, 2003; comments must be submitted by May 27, 2003.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** *Operational issues regarding textiles:* Robert Abels, Office of Field Operations (202–927–1959).

*Other operational issues:* Leon Hayward, Office of Field Operations (202–927–3271). Legal issues regarding textiles: Cynthia Reese, Office of Regulations and Rulings (202–572–8790).

*Other legal issues:* Craig Walker, Office of Regulations and Rulings (202–572–8810).

**SUPPLEMENTARY INFORMATION:**

### Background

*Andean Trade Promotion and Drug Eradication Act*

On August 6, 2002, the President signed into law the Trade Act of 2002 (the ''Act''), Pub. L. 107–210, 116 Stat. 933. Title XXXI of the Act concerns trade benefits for Andean countries, is referred to in the Act as the ''Andean Trade Promotion and Drug Eradication Act'' (the ''ATPDEA''), and consists of sections 3101 through 3108. This document specifically concerns the trade benefit provisions of section 3103 of the Act which is headed ''articles eligible for preferential treatment.''

Subsection (a) of section 3103 of the Act amends section 204 of the Andean Trade Preference Act (the ATPA, codified at 19 U.S.C. 3201–3206). The ATPA is a duty preference program that applies to exports from those Andean region countries that have been designated by the President as program beneficiaries. The origin and related rules for eligibility for duty-free treatment under the ATPA are similar to those under the older Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI, statute, codified at 19 U.S.C. 2701–2707), and, as in the case of the CBI, all articles are eligible for duty-free treatment under the ATPA (that is, they do not have to be specially designated as eligible by the President) except those articles that are specifically excluded under the statute.

The changes to section 204 of the ATPA made by subsection (a) of section 3103 of the Act involve the following: (1) The removal of section 204(c) which provided for the application of reduced duty rates (rather than duty-free treatment) for certain handbags, luggage, flat goods, work gloves, and leather wearing apparel, with a consequential redesignation of subsections (d) through (g) as (c) through (f), respectively; and (2) a revision of section 204(b). Prior to the amendment effected by subsection (a) of section 3103 of the Act, section 204(b) of the ATPA was headed ''exceptions to duty-free treatment'' and consisted only of a list of eight specific products or groups of products excluded from ATPA duty-free treatment.

As a result of the amendment made by subsection (a) of section 3103 of the Act, section 204(b) of the ATPA now is headed ''exceptions and special rules'' and consists of six principal paragraphs. These six paragraphs are discussed below.

Paragraphs (1) and (2): Articles That Are Not Import-Sensitive and Excluded Articles

Paragraph (1) of amended section 204(b) is headed ''certain articles that are not import-sensitive'' and provides that the President may proclaim duty-free treatment under the ATPA for any article described in subparagraph (A), (B), (C), or (D) that is the growth, product, or manufacture of an ATPDEA beneficiary country, that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country, and that meets the requirements of section 204, if the President determines that the article is not import-sensitive in the context of imports from ATPDEA beneficiary countries. Subparagraphs (A), (B), (C), and (D) cover, respectively:

1. Footwear not designated at the time of the effective date of the ATPA (that is, December 4, 1991) as eligible articles for the purpose of the Generalized System of Preferences (the GSP, Title V of the Trade Act of 1974, codified at 19 U.S.C. 2461–2467);

2. Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the Harmonized Tariff Schedule of the United States (HTSUS);

3. Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

4. Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the GSP.

Paragraph (2) of amended section 204(b) is headed ''exclusions'' and provides that, subject to paragraph (3), duty-free treatment under the ATPA may not be extended to the following:

1. Textile and apparel articles which were not eligible articles for purposes of the ATPA on January 1, 1994, as the ATPA was in effect on that date;

2. Rum and tafia classified in subheading 2208.40 of the HTSUS;

3. Sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; and

4. Tuna prepared or preserved in any manner in airtight containers, except as provided in paragraph (4).

The effect of new paragraphs (1) and (2) is to divide the former section 204(b) list of eight types of products excluded from ATPA duty-free treatment into two groups of four each. The four types of products covered by paragraph (1) would no longer be excluded from ATPA duty-free treatment but rather would be eligible for that treatment, provided that the President makes the appropriate negative import sensitivity determination. For these products (which include the handbags, luggage, flat goods, work gloves, and leather wearing apparel to which reduced duty rates previously applied under removed section 204(c)), the country of origin and value-content and related requirements under section 204(a) of the ATPA and the regulations thereunder would apply. The four types of products covered by paragraph (2) would remain as exclusions from duty-free treatment except as otherwise provided in paragraph (3) in the case of certain apparel and textile articles and paragraph (4) in the case of certain tuna products, and the exclusion in the case of sugar and sugar products has been reworded to refer to tariff-rate quota applicability rather than HTSUS classification. Paragraphs (3) through (6) of amended section 204(b), as discussed below, are entirely new provisions.

Paragraph (3): Preferential Treatment of Textile Articles

Paragraph (3) of amended section 204(b) is headed ''apparel articles and certain textile articles.'' Paragraph (3)(A) provides that apparel articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels, but only if those articles are described in subparagraph (B), which states that the apparel articles referred to in subparagraph (A) are the following:

1. Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or the United States, or both, exclusively from any one or any combination of the following [clause (i)]:

a. Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in the United States). Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States [subclause (I)];

b. Fabrics or fabric components formed or components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in one or more ATPDEA beneficiary countries, if those fabrics (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, or vicũna [subclause (II)];

c. Fabrics or yarns, to the extent that apparel articles of those fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the North American Free Trade Agreement (NAFTA) [subclause (III)]; and

d. Fabrics or yarns, to the extent that the President has determined that the fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the treatment provided under clause (i)(III) [clause (ii)];

2. 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 those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries), whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i)). For these articles, preferential treatment starts on October 1, 2002, and extends for each of the four succeeding 1-year periods, subject to the application of annual quantitative limits expressed in square meter equivalents and with an equal percentage increase in the limit for each succeeding year [clause (iii)];

3. A handloomed, handmade, or folklore textile or apparel article of an ATPDEA beneficiary country that the President and representatives of the ATPDEA beneficiary country concerned mutually agree upon as being a handloomed, handmade, or folklore good of a kind described in section 2.3(a), (b), or (c) or Appendix 3.1.B.11 of Annex 300–B of the NAFTA and that is certified as such by the competent authority of the beneficiary country [clause (iv)]; and

4. Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or one or more ATPDEA beneficiary countries, or both, but excluding articles entered under clause (i), (ii), (iii), or (iv) [clause (v)(I)]. However, during each of four 1-year periods starting on October 1, 2003, the articles in question are eligible for preferential treatment under paragraph (3) only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of a producer or an entity controlling production that are entered and eligible under clause (v)(I) during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under clause (v)(I) during the preceding 1-year period [clause (v)(II)]; the 75 percent standard rises to 85 percent for a producer or entity controlling production whose articles are found by Customs to have not met the clause (v)(II) 75 percent standard in the preceding year [clause (v)(III)].

In addition to the articles described above, paragraph (3)(B) provides for preferential treatment of the following non-apparel textile articles:

1. Textile luggage assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS [clause (vii)(I)]; and

2. Textile luggage assembled from fabric cut in an ATPDEA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States [clause (vii)(II)].

Clause (vi) under paragraph (3) sets forth special rules that apply for purposes of determining the eligibility of articles for preferential treatment

under paragraph (3). These special rules are as follows:

1. Clause (vi)(I) sets forth a rule regarding the treatment of findings and trimmings. It provides that an article otherwise eligible for preferential treatment under paragraph (3) will not be ineligible for that treatment because the article contains findings or trimmings of foreign origin, if those findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. This provision specifies the following as examples of findings and trimmings: sewing thread, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips, zippers (including zipper tapes), and labels.

2. Clause (vi)(II) sets forth a rule regarding the treatment of specific interlinings, that is, a chest type plate, ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments. Under this rule, an article otherwise eligible for preferential treatment under paragraph (3) will not be ineligible for that treatment because the article contains interlinings of foreign origin, if the value of those interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article. This provision also provides for the termination of this treatment of interlinings if the President makes a determination that United States manufacturers are producing those interlinings in the United States in commercial quantities.

3. Clause (vi)(III) sets forth a *de minimis* rule which provides that an article that would otherwise be ineligible for preferential treatment under paragraph (3) because the article contains yarns not wholly formed in the United States or in one or more APTDEA beneficiary countries will not be ineligible for that treatment if the total weight of all those yarns is not more than 7 percent of the total weight of the good.

4. Finally, clause (vi)(IV) sets forth a special origin rule that provides that an article otherwise eligible for preferential treatment under clause (i) or clause (iii) will not be ineligible for that treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

Paragraph (4): Preferential Treatment of Tuna

Paragraph (4) of amended section 204(b) concerns the preferential treatment of tuna. Paragraph (4)(A) provides for the entry in the United States, free of duty and free of any quantitative restrictions, of tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each, and that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country. Paragraph (4)(B)(i) defines a ''United States vessel'' for purposes of paragraph (4)(A) as a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46 of the United States Code. Paragraph (4)(B)(ii) defines an ''ATPDEA vessel'' for purposes of paragraph (4)(A) as a vessel (1) which is registered or recorded in an ATPDEA beneficiary country, (2) which sails under the flag of an ATPDEA beneficiary country, (3) which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of those boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country, (4) of which the master and officers are nationals of an ATPDEA beneficiary country, and (5) of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

Paragraph (5): Customs Procedures

Paragraph (5) of amended section 204(b) is entitled ''Customs procedures'' and sets forth regulatory standards for purposes of preferential treatment under paragraph (1), (3), or (4). It includes provisions relating to import procedures, prescribes a specific factual determination that the President must make regarding the implementation of certain procedures and requirements by each ATPDEA beneficiary country, and sets forth the responsibility of Customs regarding the study of, and reporting to Congress on, cooperative and other actions taken by each ATPDEA beneficiary country to prevent transshipment and circumvention in the case of textile and apparel goods. The specific provisions under paragraph (5) that require regulatory treatment in this document are the following:

1. Paragraph (5)(A)(i) provides that any importer that claims preferential treatment under paragraph (1), (3), or (4) must comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury. The NAFTA provision referred to in paragraph (5)(A)(i) concerns the use of a Certificate of Origin and specifically requires that the importer (1) make a written declaration, based on a valid Certificate of Origin, that the imported good qualifies as an originating good, (2) have the Certificate in its possession at the time the declaration is made, (3) provide the Certificate to Customs on request, and (4) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.

2. Paragraph (5)(B) provides that the Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (5)(A)(i) will not be required in the case of an article imported under paragraph (1), (3), or (4) if that Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico. Article 503 of the NAFTA sets forth, with one general exception, three specific circumstances in which a NAFTA country may not require a Certificate of Origin.

Paragraph (6): Definitions

Paragraph (6) of amended section 204(b) sets forth a number of definitions that apply for purposes of section 204(b). These definitions include, in paragraph (6)(B), a definition of ''ATPDEA beneficiary country'' as any ''beneficiary country,'' as defined in section 203(a)(1) of the ATPA, which the President designates as an ATPDEA beneficiary country, taking into account the criteria contained in sections 203(c) and (d) and other appropriate criteria, including those specified under new paragraph (6)(B) of amended section 204(b).

On October 31, 2002, the President signed Proclamation 7616 (published in the **Federal Register** at 67 FR 67283 on

November 5, 2002) to implement the new trade benefit provisions of section 3103 of the Act. The Annex to that Proclamation set forth a number of modifications to the HTSUS to accommodate the ATPDEA program, and those HTSUS changes were also the subject of a technical corrections document prepared by the Office of the United States Trade Representative and published in the **Federal Register** (67 FR 79954) on December 31, 2002.

This document sets forth, on an interim basis, amendments to the Customs Regulations to implement those new trade benefit provisions and to conform the existing ATPA implementing regulations to those statutory changes. These regulatory changes are discussed below.

**Section-by-Section Discussion of Interim Amendments**

*Sections 10.201 and 10.202 and Removal of § 10.208*

In the existing ATPA implementing regulations, § 10.208 is removed in order to reflect the removal of paragraph (c) from section 204 of the ATPA, the cross-reference in the introductory text of § 10.202 is modified to reflect that removal, and § 10.201 is revised to reflect the removal of that reduced-duty provision and to refer to new §§ 10.241–10.248 and 10.251–10.257 discussed below. In addition, paragraph (b) of § 10.202 is amended by recasting the list of articles excluded from the ATPA to reflect the terms of paragraph (2) of amended section 204(b); the articles listed in paragraph (1) of amended section 204(b) are dealt with in new §§ 10.251–10.257.

*New §§ 10.241 Through 10.248*

New §§ 10.241 through 10.248 are intended to implement those apparel and other textile article preferential treatment provisions within paragraphs (3), (5) and (6) of amended section 204(b) of the ATPA statute that relate to U.S. import procedures.

Section 10.241 outlines the statutory context for the new sections and is self-explanatory.

Section 10.242 sets forth definitions for various terms used in the new regulatory provisions. The following points are noted regarding these definitions:

1. The definition of ''apparel articles,'' by referring to goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99.15 and 6505.90 of the HTSUS, is intended to reflect the scope of apparel under the Agreement on Textiles and Clothing annexed to the WTO Agreement and referred to in 19 U.S.C. 3511(d)(4).

2. The definition of ''assembled'' and ''sewn or otherwise assembled'' in the context of production in one or more ATPDEA beneficiary countries is based in part on the definition of ''wholly assembled'' in § 102.21(b)(6) of the Customs Regulations (19 CFR 102.21(b)(6)). However, the definition also allows a prior partial assembly in the United States, consistent with the overall structure of the ATPDEA as reflected in the types of operations allowed under the program.

3. The definition of ''ATPDEA beneficiary country'' is an adaptation of, and for purposes of this context is consistent with, the definition contained in section 204(b)(6)(B).

4. The definition of ''chief value'' is based in part on a definition of that term which appeared in the General Headnotes to the Tariff Schedules of the United States (TSUS), the predecessor to the HTSUS, and also relies on the concept of ''value'' used for purposes of the finding, trimmings, and interlinings provisions discussed below in connection with § 10.243(c).

5. The definition of ''cut'' in the context of production in one or more ATPDEA beneficiary countries provides that all fabric components used in the assembly of an article must be cut in ATPDEA beneficiary countries except where cutting and partial assembly takes place in the United States prior to cutting and assembly in the beneficiary countries. The exception in the case of the United States was included to ensure consistency with the definition of ''assembled'' and ''sewn and assembled'' discussed above (which, by allowing a partial assembly in the United States, implies that some cutting also will take place in the United States prior to the partial assembly).

6. The definition of ''luggage'' is based on the definition contained in the headnotes of Subpart D of Schedule 7 of the TSUS (the current HTSUS contains no definition of luggage).

7. The definition of ''NAFTA'' reflects the definition contained in section 204(b)(6)(C) of the ATPA.

8. The expression ''wholly formed'' is dealt with in three definitions, one with reference to yarns and another with reference to fabrics and the third with reference to fabric components, because each of these terms is modified by ''wholly formed'' in one or more provisions of the statute that specify production processes that must be performed in the United States or ATPDEA beneficiary countries. These definitions are intended to ensure that all processes essential for yarn, fabric, and fabric component formation are performed in the United States or ATPDEA beneficiary countries. The following additional points are noted regarding these three definitions:

a. The definition that relates to fabric(s) is based in part on the definition of ''fabric-making process'' in § 102.21(b)(2) of the Customs Regulations (19 CFR 102.21(b)(2)), and a similar approach is used in the definition that relates to yarns. The definition that relates to fabric components requires both formation of the fabric and formation of the component from that fabric.

b. The definition of ''wholly formed'' yarns includes references to ''drawing to fully orient a filament'' and to ending with a yarn or ''plied yarn.'' The first reference concerns a production process, draw-texturing, that is applied to partially oriented yarn (POY) in order to fully orient the filament yarn and thus render it suitable for use as a yarn; Customs believes that a filament that requires draw-texturing cannot be considered to be ''wholly formed'' until that process is completed. The reference to ending with a ''plied yarn'' reflects the position of Customs that a yarn is completed, that is, ''wholly formed,'' only when it is in the form in which it will be used as a yarn to produce a textile product (for example, a fabric or a knit-to-shape component); thus, a single ply yarn that will be joined with other single ply yarns to create a plied yarn is not wholly formed until the plying procedure is completed.

c. Except in the case of yarns, each definition refers to various production processes that ''took place in a single country.'' A different approach is taken in the case of yarns because in several instances the article descriptions in the ATPDEA statutory and regulatory texts expressly refer to yarns wholly formed *in one or more ATPDEA beneficiary countries.* Thus, the ''wholly formed yarns'' definition refers to production processes that took place ''in the United States or in one or more ATPDEA beneficiary countries'' in order to allow for the sharing of yarn production processes among multiple beneficiary countries. For example, in the case of a single yarn formed in one beneficiary country and plied with other yarns in a second beneficiary country, or in the case of POY extruded in one beneficiary country and draw-textured in a second beneficiary country, the plied yarn and the draw-textured yarn would meet the ''wholly formed'' standard for yarns under the ATPDEA program.

Section 10.243 identifies the articles to which preferential treatment applies under paragraph (3) of amended section

204(b). Paragraph (a) identifies the various groups of apparel and other textile articles described under paragraph (3)(B) of the statute and includes in the introductory text an ''imported directly'' requirement, consistent with the terms of the statute. Paragraph (b) sets forth rules regarding dyeing, printing, finishing, and other operations. Paragraph (c) covers the special rules contained in paragraph (3)(B)(vi) of the statute involving findings and trimmings and interlinings of foreign origin, the *de minimis* rule for yarns, and the rule for nylon filament yarn. Paragraph (d) explains what is meant by ''imported directly.'' The following specific points are noted regarding these regulatory texts:

1. Paragraph (a)(1) covers the various groups of apparel articles specified in paragraphs (3)(B)(i) and (3)(B)(ii) of the statute for preferential treatment individually (rather than in combination). Paragraph (a)(1)(i) corresponds to paragraph (3)(B)(i)(I) of the statute; paragraph (a)(1)(ii) corresponds to paragraph (3)(B)(i)(II) of the statute; paragraph (a)(1)(iii) corresponds to paragraph (3)(B)(i)(III) of the statute; and paragraph (a)(1)(iv) corresponds to paragraph (3)(B)(ii) of the statute. The following additional points are noted regarding these paragraph (a)(1) texts:

a. The regulatory text in paragraph (a)(1)(i) includes the provision in paragraph (3)(B)(i)(I) of the statute that any dyeing, printing, or finishing of knit or woven fabrics must take place in the United States. However, the regulatory text in this context refers to knitted ''or crocheted'' fabrics, in order to reflect tariff and trade usage, and also includes a reference to ''fabric components produced from fabric'' in order to (1) reflect the fact that apparel articles are most often assembled from apparel components rather than from fabrics and (2) clarify the Customs position that knitting to shape does not create a fabric but rather results in the creation of a component that is ready for assembly without having gone through a fabric stage.

b. The regulatory text in paragraph (a)(1)(ii) refers to llama, alpaca, ''and/or'' vicuña in order to ensure, consistent with what Customs believes is the intent, that these three materials may be present either singly or in combination with each other (for example, as a blend) for purposes of the chief value concept. It should also be noted that imported products containing vicuña are subject to specific admissibility requirements under regulations administered by the Fish and Wildlife Service of the U.S. Department of the Interior; those regulations, set forth in 50 CFR part 17, were recently amended by a final rule document published in the **Federal Register** (67 FR 37695) on May 30, 2002, and questions regarding the admissibility of vicuña products under those regulations should be directed to the Fish and Wildlife Service.

c. Paragraph (a)(1)(iii) covers fabrics and yarns that are considered to be in ''short supply'' for purposes of Annex 401 of the NAFTA (that is, the fabrics or yarns are not required to be originating within the meaning of the NAFTA, if those fabrics or yarns undergo the specified tariff shift for that article and that article meets all other applicable requirements for an originating good). For example, sweaters of wool classified under subheading 6110.11.00 of the HTSUS that are knit to shape in a NAFTA country from 40 percent non-originating silk yarn and 60 percent originating wool yarn may qualify as originating goods because a tariff shift from silk yarn is allowed by the applicable tariff shift rule, but sweaters knit to shape from 40 percent originating silk yarn and 60 percent non-originating wool yarn will not qualify as originating goods because the non-originating wool yarn is classified under a heading (5106) from which a tariff shift is not allowed. The paragraph (a)(1)(iii) text also includes a parenthetical exclusion reference regarding articles classifiable under subheading 6212.10 of the HTSUS (that is, brassieres, which are specially treated in paragraph (3)(B)(v)(I) of the statute and paragraph (a)(4) of § 10.243 as discussed below). This exclusion language is necessary in order to avoid rendering meaningless the additional requirements that apply to brassieres under the statute (which are covered by § 10.248 as discussed below). Customs notes in this regard that the NAFTA Annex 401 rule for articles classified in subheading 6212.10 of the HTSUS requires only the performance of certain specified production processes (that is, ''both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties'') and includes no requirements regarding the source of the fabrics or yarns. There is little logic in applying the short supply provision to a product where the NAFTA rule makes no mention of excluded materials. Thus, Customs believes that brassieres of subheading 6212.10, HTSUS, are not covered by paragraph (3)(B)(i)(III) of the statute and § 10.243(a)(1)(iii) of the regulations.

2. Paragraph (a)(2) covers combinations of two or more of the various groups of apparel articles specified in paragraphs (3)(B)(i) and (3)(B)(ii) of the statute. The regulatory text uses the words ''*exclusively* from a combination of * * *'' in order to clarify the distinction between the combinations allowed under this provision and those allowed under the paragraph (a)(7) text discussed below.

3. Paragraph (a)(3) covers the handloomed, handmade, and folklore articles specified in paragraph (3)(B)(iv) of the statute.

4. Paragraph (a)(4) covers the apparel articles referred to in paragraph (3)(B)(v) of the statute and refers specifically to ''brassieres'' in order to explain the coverage of the HTSUS provision referred to in the statute. The regulatory text here reflects only the general product description of subclause (I) of paragraph (3)(B)(v) of the statute but also includes a cross-reference to new § 10.248, discussed below, which treats in detail the 75 and 85 percent U.S.-formed fabric requirements of subclauses (II) and (III).

5. Paragraphs (a)(5) and (a)(6) cover the two types of textile luggage referred to in paragraphs (3)(B)(vii)(I) and (3)(B)(vii)(II) of the statute.

6. Paragraph (a)(7) covers the apparel articles specified in paragraph (3)(B)(iii) of the statute. The text includes a reference to articles assembled ''in part but not exclusively'' from any of the fabrics or components described in paragraph (a)(1). This language is intended, in combination with the use of the word ''exclusively'' in paragraph (a)(1), to clarify the effect of the statutory limitation in paragraph (3)(B)(iii) regarding the use of fabrics or components described in paragraph (3)(B)(i), the intent of which appears to be to ensure that there is no overlap (that is, conflict) in product coverage between the two statutory provisions at issue.

7. Paragraph (b)(1) clarifies the Customs position regarding dyeing, printing, and finishing operations. In view of the specific mention of these processes in regard to knit and woven fabrics in paragraph (3)(B)(i)(I) of the statute and § 10.243(a)(1)(i) of the regulations, Customs believes that this clarification is necessary to explain the status of these processes in other contexts under the statute and regulations. The paragraph (b)(1) text provides that these processes may be performed on any yarn or fabric or component without affecting the eligibility of an article for preferential treatment, provided that the dyeing, printing, or finishing is performed only in the United States or in an ATPDEA beneficiary country, and subject to two conditions. As regards the general

limitation of these processes to the United States and ATPDEA beneficiary countries, Customs believes that this is consistent with the overall structure and intent of the ATPDEA which is to benefit U.S. and Andean textile producers. The first condition, set forth in paragraph (b)(1)(i), reflects the U.S. dyeing, printing, and finishing requirement of paragraph (3)(B)(i)(I) of the statute and paragraph (a)(1)(i) of the regulatory text as discussed above. The second condition, set forth in paragraph (b)(1)(ii), reflects the principle that in the case of assembled luggage described in paragraph (a)(5) of the regulatory text (paragraph (3)(B)(vii)(I) of the statute), an operation that is incidental to the assembly process may be performed in an ATPDEA beneficiary country. This provision reflects the terms of subheading 9802.00.80, HTSUS, and the regulations under that HTSUS provision which include, in 19 CFR 10.16(c), a list of operations not considered incidental to assembly.

8. Paragraph (b)(2) covers post-assembly and other operations (for example, embroidering, stone-washing, perma-pressing, garment-dyeing). The paragraph provides that these operations will not disqualify an otherwise eligible article from preferential treatment, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and provided that, in the case of assembled luggage described in paragraph (a)(5), the operation is incidental to the assembly process in an ATPDEA beneficiary country. This paragraph is intended to have the same clarifying effect as paragraph (b)(1) discussed above.

9. Paragraph (c)(1) is divided into three parts: Paragraph (c)(1)(i) reflects the basic findings, trimmings, interlinings, and *de minimis* rules of paragraphs (3)(B)(vi)(I)–(III) of the statute; paragraph (c)(I)(ii) sets forth definitions of the terms ''cost'' and ''value'' as used in these provisions; and paragraph (c)(1)(iii) is intended to clarify the relationship between findings and trimmings on the one hand and yarns on the other hand for purposes of applying the 25 percent by value and 7 percent by weight limitations under the statute. The following additional points are noted regarding these paragraph (c)(1) texts:

a. In the first sentence of paragraph (c)(1)(i)(A), the words ''the value of'' have been added after the word ''if'' to clarify that it is the value of the findings and trimmings that must not exceed the 25 percent level. In addition, in the second sentence of paragraph (c)(1)(i)(A), the comma appearing in the statutory text between ''decorative lace'' and ''trim'' has been removed to avoid an ambiguity between the meanings of ''trimmings'' and ''trim.'' Also in the second sentence of paragraph (c)(1)(i)(A), the words ''zippers, including zipper tapes and labels'' in paragraph (3)(B)(vi)(I) of the statute have been replaced with the words ''zippers (including zipper tapes), and labels'' because there is no such thing as a ''zipper label'' and to ensure proper treatment of labels as findings and trimmings in their own right.

b. A separate paragraph (c)(1)(i)(C) has been included to allow a combination of findings and trimmings and interlinings up to a total of 25 percent of the cost of the components of the assembled article, because Customs believes that was the result intended by Congress by the inclusion of the words ''(and any findings and trimmings)'' in paragraph (3)(B)(vi)(II)(aa) of the statute.

c. The definitions of ''cost'' and ''value'' in paragraph (c)(1)(ii) are derived primarily from the regulations that apply to components and materials under subheading 9802.00.80, HTSUS (in particular, 19 CFR 10.17), and under the ATPA regulations (in particular, 19 CFR 10.206(d)(3)).

d. As regards paragraph (c)(1)(iii), Customs believes that some clarification is appropriate in this context because sometimes a yarn may be used in an article as a finding or trimming. The statute is ambiguous as to whether an article is ineligible if the total weight of all foreign yarns exceeds the 7 percent limit but the value of all foreign findings and trimmings does not exceed the 25 percent limit. Thus, the question arises as to which limitation should apply. In the absence of any guidance on this point in the relevant legislative history, Customs has concluded that the best approach is to give precedence to the findings and trimmings limitation. Thus, under paragraph (c)(1)(iii) a foreign yarn that is used in an article as a finding or trimming would be subject to the 25 percent by value limitation rather than the 7 percent by weight limitation.

10. In paragraph (c)(2), which sets forth the special rule for nylon filament yarn of paragraph (3)(B)(vi)(IV) of the statute, specific reference is made to Canada, Mexico, and Israel because those are the only countries with which the United States had a free trade agreement that entered into force before January 1, 1995.

11. The explanation of ''imported directly'' in paragraph (d) follows the text used in § 10.204 of the ATPA implementing regulations (19 CFR 10.204) but incorporates editorial changes to reflect an ATPDEA context.

Section 10.244 prescribes the use of a Certificate of Origin and thus reflects the regulatory mandate contained in paragraph (5)(A)(i) of amended section 204(b). Paragraph (a) of the regulatory text contains a general statement regarding the purpose and preparation of the Certificate of Origin and is based in part on § 181.11 of the implementing NAFTA regulations (19 CFR 181.11). Paragraph (b) sets forth the form for the Certificate of Origin, which is directed toward the specific groups of articles described under paragraph (3)(B) of amended section 204(b) and thus bears no substantive relationship to the Certificate of Origin used under the NAFTA (which involves different country of origin standards for preferential duty treatment). Paragraph (c) sets forth instructions for preparation of this Certificate of Origin. It should be noted that the Certificate of Origin prescribed under this section has no effect on the textile declaration prescribed under § 12.130 of the Customs Regulations (19 CFR 12.130) which still must be submitted to Customs in accordance with that section even in the case of textile products that are entitled to preferential treatment under the ATPDEA program.

Section 10.245 sets forth the procedures for filing a claim for preferential treatment. Consistent with the mandate in paragraph (5)(A)(i) of amended section 204(b) for procedures ''similar in all material respects to the requirements of Article 502(1) of the NAFTA,'' this regulatory text is based on the NAFTA regulatory text contained in 19 CFR 181.21, but includes appropriate changes to conform to the current context.

Section 10.246 concerns the maintenance of records and submission of the Certificate of Origin by the importer and follows the NAFTA regulatory text contained in 19 CFR 181.22 but, again, with appropriate changes to conform to the current context. The following points are noted regarding the regulatory text:

1. In paragraph (a) which concerns the maintenance of records, specific reference is made to ''the provisions of part 163'' which set forth the basic Customs recordkeeping requirements that apply to importers and other persons involved in customs transactions. This requirement parallels the NAFTA recordkeeping requirement in § 181.22.

2. Paragraph (b) concerns submission of the Certificate of Origin to Customs and thus also relates directly to a requirement contained in Article 502(1)

of the NAFTA. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(b) but differs from the NAFTA text by not specifying a 4-year period for acceptance of the Certificate by Customs, because that 4-year period is only relevant in a NAFTA context.

3. Paragraph (c) concerns the correction of defective Certificates of Origin and the nonacceptance of blanket Certificates in certain circumstances. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(c) but is simplified and does not include any reference to NAFTA-type origin verifications which do not apply for ATPDEA purposes.

4. Paragraph (d) sets forth the circumstances in which a Certificate of Origin is not required. Consistent with the terms of paragraph (5)(B) of amended section 204(b), this regulatory text follows the terms of Article 503 of the NAFTA and the NAFTA regulatory text contained in 19 CFR 181.22(d).

Section 10.247 concerns the verification and justification of claims for preferential treatment. Paragraph (a) concerns the verification of claims by Customs and paragraph (b) prescribes steps that a U.S. importer should take in order to support a claim for preferential treatment. Although paragraph (a) is derived from provisions contained in the GSP regulations (19 CFR 10.173(c)), in the CBI regulations (19 CFR 10.198(c)), and in the ATPA regulations (19 CFR 10.207(e)), the text expands on the GSP/CBI/ATPA approach in the following respects:

1. In paragraph (a)(1), specific reference is made to the review of import-related documents required to be made, kept, and made available by importers and other persons under Part 163 of the regulations.

2. Paragraph (a)(2) sets forth examples of documents and information relating to production Customs may need to review for purposes of verifying a claim for preferential treatment.

3. Paragraph (a)(3) refers to evidence to document the use of U.S. or ATPDEA beneficiary country materials in an article, because the presence of those materials is a key element for some of the articles to which preferential treatment applies under the ATPDEA. Accordingly, U.S. importers must be aware of the fact that their ability to successfully claim preferential treatment on their imports may be a function of the nature of the records maintained, for example by an ATPDEA beneficiary country producer, not only with regard to the production process but also with regard to the source of the materials used in that production.

Section 10.248 sets forth additional requirements for preferential treatment of brassieres described in paragraph (a)(4) of § 10.243 and is directed specifically to the 75 and 85 percent U.S.-formed fabric requirements of subclauses (II) and (III) of paragraph (3)(B)(v) of amended section 204(b). The following points are noted regarding this regulatory text:

1. The definitions of ''cost'' and ''declared customs value'' in paragraphs (a)(4) and (a)(5) are based in part on principles reflected in the Customs Regulations provisions that apply for purposes of subheading 9802.00.80, HTSUS (see, in particular, 19 CFR 10.17) and under the ATPA see, in particular, 19 CFR 10.206(d)(3)). Moreover, as regards the definition of ''declared customs value'' in paragraph (a)(5), Customs notes that because the circumstance in which this terminology appears in the statute does not relate to a point at which a value is normally declared to U.S. Customs, the text includes multiple factual circumstances that reflect all conditions under which a value of fabric could exist for purposes of comparison to the ''cost'' (of fabrics formed in the United States) defined in paragraph (a)(4).

2. Paragraph (b)(1) reflects the 75 and 85 percent U.S. fabric content requirements of paragraphs (3)(B)(v)(II) and (III) of the statute and also requires the U.S. importer to include a specific documentation identifier assigned by Customs (see the discussion of paragraph (c) below) when filing the claim for preferential treatment. Customs considers a specific documentation identifier necessary. The following points are noted regarding this paragraph:

a. Paragraph (b)(1)(i), which concerns the 75 percent requirement of paragraph (3)(B)(v)(II) of the statute, refers to articles that are ''entered as articles described in § 10.243(a)(4),'' whereas paragraph (b)(1)(ii), which concerns the 85 percent requirement of paragraph (3)(B)(v)(III) of the statute, refers to articles that ''conform to the production standards set forth in § 10.243(a)(4).'' The difference in wording is necessary in order to enable the 85 percent standard to operate. Customs notes in this regard that if the universe of articles that are looked at for purposes of assessing compliance with the 85 percent standard is the same as that used for purposes of the 75 percent standard (that is, articles that were entered under the HTSUS subheading that applies to articles described in paragraph (3)(B)(v)(I) of the statute and § 10.243(a)(4)), it would be impossible after the end of the first year of the program (that is, after September 30, 2003) for a new producer or entity to enter the program, or for a producer or entity that failed to meet the 75 percent standard in the previous year to reenter the program. This is because application of the 85 percent standard presupposes a failure to have met the 75 percent standard in the preceding year, in which case there could not be any entries in the next year under the HTSUS subheading that applies to articles described in paragraph (3)(B)(v)(I) of the statute and § 10.243(a)(4) against which compliance with the 85 percent standard can be determined. The wording in paragraph (b)(1)(ii) of the regulatory text, by referring to articles that meet the U.S./Andean cutting and assembly production requirement (regardless of the HTSUS subheading under which they are entered), is intended to avoid this anomalous result.

b. The specific identifier, which is to be noted on the entry summary or warehouse withdrawal, will serve both the importer and Customs. The identifier serves the importer as it is a method to indicate that the importer has at the time of entry a specific basis for claiming preferential treatment—that either the 75 or the 85 percent requirement has been met in the preceding year—for the brassieres being entered and thus will facilitate the entry and clearance process. The identifier serves Customs as it is a means by which Customs can tie a particular entry to the fact that a producer of brassieres or an entity controlling production of brassieres has met the 75 or 85 percent requirement. This is essential in view of the fact that compliance with the 75 or 85 percent requirement must be established by a producer or by an entity controlling production who might not be the U.S. importer.

3. Paragraph (b)(2) sets forth a number of general rules that Customs believes apply under paragraphs (b)(1)(i) and (b)(1)(ii) and for purposes of preparing and filing the documentation prescribed under paragraph (c) by the producer or entity controlling production. Paragraph (b)(2) also includes some examples to illustrate the application of those rules.

4. Paragraph (c) provides that, in order for an importer to be able to include the distinct and unique identifier on the entry summary or warehouse withdrawal as required under paragraph (b)(1)(iii), the producer or entity controlling production must have filed with Customs a declaration of compliance with the applicable 75 or 85 percent requirement. Paragraph (c) further provides that Customs will advise the filer of the identifier assigned to that declaration of compliance so that

the filer may provide that number to the appropriate U.S. importers for inclusion on current entry summaries or warehouse withdrawals covering articles of the producer or entity controlling production in question. So that each affected importer might know what the appropriate identifier is prior to the arrival of the goods in the United States, paragraph (c) provides that the declaration of compliance should be filed at least 10 days prior to the date of the first shipment of the goods to the United States; Customs believes that this 10-day period should afford sufficient time for Customs to assign the identifier to the declaration of compliance and provide the identifier to the producer or entity controlling production and for the producer or entity to then provide it to the appropriate U.S. importer(s). Paragraph (c) also provides for the filing of an amended declaration of compliance or for following other appropriate procedures if the initial filing was based on an estimate because information for the whole year was not available at the time of the initial filing and the final data differs from the estimate, or if the producer or entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information. Finally, paragraph (c) identifies the specific Customs office at which the filing must take place and prescribes the form the declaration of compliance must take and includes instructions for its completion.

5. Paragraph (d) sets forth standards regarding the verification of a declaration of compliance and is similar to the rules that apply for purposes of verification of ATPDEA preferential treatment claims under § 10.247 but with changes to reflect the current context. Paragraph (d) also specifies the nature of the accounting books and documents that Customs expects to see when verifying the statements made on a declaration of compliance. Finally, so that affected U.S. importers will know when Customs, after performing a verification of a declaration of compliance, has determined that articles of the producer or entity controlling production in question failed to meet the applicable 75 or 85 percent requirement, paragraph (d) provides that Customs will publish a notice of that determination in the **Federal Register**.

*New §§ 10.251 Through 10.257*

New §§ 10.251 through 10.257 are intended to implement those non-textile preferential treatment provisions within paragraphs (1), (4), (5) and (6) of amended section 204(b) of the ATPA statute that relate to U.S. import procedures. In view of the similarities between paragraphs (1), (3) and (4) under the statute, in particular as regards the use of a Certificate of Origin and related Customs procedures, the structure and content of new §§ 10.251 through 10.257 are based on the structure and content used in this document for the paragraph (3) textile provisions of new §§ 10.241 through 10.247, but with appropriate changes or variations to reflect the paragraphs (1) and (4) statutory context. The following particular points are noted regarding the texts of new §§ 10.251 through 10.257:

1. In § 10.252, the definitions of ''ATPDEA beneficiary country vessel'' and ''United States vessel'' (which apply only for purposes of preferential treatment of tuna under paragraph (4) of amended section 204(b)) follow the definitions that appear in paragraph (4)(B) of the statute, except that in the first definition the words ''beneficiary country'' have been included within the defined term (which in the statute reads simply ''ATPDEA vessel'') in order to reflect the wording used in the general statutory and regulatory preferential treatment rule for tuna.

2. In § 10.253(a), which identifies the non-textile articles eligible for preferential tariff treatment, an ''imported directly'' requirement has been included in the introductory text to reflect the inclusion of that requirement as a condition of preferential treatment in paragraphs (1) and (4) of amended section 204(b). The remainder of § 10.253(a) reflects the terms of paragraphs (1)(A)–(D) and (4)(A) of the statute.

3. Section 10.253(b) explains the meaning of ''imported directly.'' As in the case of new § 10.243(d) discussed above, the text here follows the text used in § 10.204 of the ATPA implementing regulations (19 CFR 10.204) but with some editorial changes to reflect an ATPDEA context.

4. Sections 10.253(c) and (d) set forth country of origin criteria and value content requirements that apply for purposes of preferential treatment for all of the non-textile articles covered by paragraph (1) of amended section 204(b), that is, all non-textile articles other than tuna to which different standards apply under paragraph (4) of the statute. Since paragraph (1) of the statute refers to ''any article that * * * meets the requirements of *this section*,'' Customs believes that the country of origin and value content requirements that apply to ATPA beneficiary country goods under section 204(a) of the ATPA must also apply in the present context. Accordingly, the new §§ 10.253(c) and (d) texts are based on §§ 10.205 and 10.206 of the ATPA implementing regulations (19 CFR 10.205 and 10.206).

5. Sections 10.254 through 10.256 follow the basic NAFTA Certificate of Origin and preferential treatment claim filing procedures (but with modifications to reflect the specific rules that apply under amended section 204(b) of the ATPA), including the use of a separate Customs Form for the Certificate of Origin rather than setting it out in the regulatory texts. Therefore, the § 10.254 text is considerably shorter than the text of new § 10.244 discussed above because it does not contain the text of the Certificate and the instructions for its completion.

*Appendix to Part 163*

Finally, this document amends Part 163 of the Customs Regulations (19 CFR part 163) by adding to the list of entry records in the Appendix (the interim ''(a)(1)(A) list'') references to the ATPDEA Textile Certificate of Origin prescribed under new § 10.246, the ATPDEA Declaration of Compliance for brassieres prescribed under new § 10.248, and the ATPDEA Certificate of Origin for tuna and other non-textile articles prescribed under new § 10.256.

**Comments**

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5 of the Treasury Department Regulations (31 CFR 1.5), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

**Inapplicability of Notice and Delayed Effective Date Requirements and the Regulatory Flexibility Act**

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out

the preferential treatment proclaimed by the President under the Andean Trade Promotion and Drug Eradication Act. Presidential Proclamation 7616 made that preferential treatment effective with respect to goods entered, or withdrawn from warehouse for consumption, as of the date of signature, October 31, 2002, and these regulations are needed in order for importers to know how to file their claims for preferential treatment. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

**Executive Order 12866**

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

**Paperwork Reduction Act**

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0219.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these interim regulations is in §§ 10.244, 10.245, 10.246, 10.248, 10.254, 10.255, and 10.256. This information conforms to requirements in 19 U.S.C. 3203 and is used by Customs to determine whether textile and apparel articles and other products imported from designated beneficiary countries are entitled to preferential treatment under the Andean Trade Promotion and Drug Eradication Act. The likely respondents are business organizations including importers, exporters, and manufacturers.

*Estimated annual reporting and/or recordkeeping burden:* 8,000 hours.

*Estimated average annual burden per respondent/recordkeeper:* 4 hours.

*Estimated number of respondents and/or recordkeepers:* 2,000.

*Estimated annual frequency of responses:* 24.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the interim regulations.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

**Drafting Information**

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects**

*19 CFR Part 10*

Andean Trade Preference, Assembly, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

*19 CFR Part 163*

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

For the reasons set forth in the preamble, Parts 10 and 163, Customs Regulations (19 CFR Parts 10 and 163), are amended as set forth below.

## PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read, the specific authority citation for §§ 10.201 through 10.207 is revised to read, and a new specific authority citation for §§ 10.241 through 10.248 and §§ 10.251 through 10.257 is added to read, as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.201 through 10.207 also issued under 19 U.S.C. 3203;

* * * * *

Sections 10.241 through 10.248 and §§ 10.251 through 10.257 also issued under 19 U.S.C. 3203.

2. Section 10.201 is revised to read as follows:

**§ 10.201 Applicability.**

Title II of Pub. L. 102–182 (105 Stat. 1233), entitled the Andean Trade Preference Act (ATPA) and codified at 19 U.S.C. 3201 through 3206, authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country and to designate countries as beneficiary countries. The provisions of §§ 10.202 through 10.207 set forth the legal requirements and procedures that apply for purposes of obtaining that duty-free treatment for certain articles from a beneficiary country which are identified for purposes of that treatment in General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and in the ''Special'' rate of duty column of the HTSUS. Provisions regarding preferential treatment of apparel and other textile articles under the ATPA are contained in §§ 10.241 through 10.248, and provisions regarding preferential treatment of tuna and certain other non-textile articles under the ATPA are contained in §§ 10.251 through 10.257.

3. In § 10.202, the introductory text is amended by removing the reference ''10.208'' and adding, in its place, the reference ''10.207'', and paragraph (b) is amended by removing paragraphs (b)(1) through (b)(8) and adding, in their place, new paragraphs (b)(1) through (b)(4) to read as follows:

**§ 10.202 Definitions.**

* * * * *

(b) * * *

(1) Textiles and apparel articles which were not eligible articles for purposes of the ATPA on January 1, 1994, as the ATPA was in effect on that date, except as otherwise provided in §§ 10.241 through 10.248;

(2) Rum and tafia classified in subheading 2208.40, Harmonized Tariff Schedule of the United States;

(3) Sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; or

(4) Tuna prepared or preserved in any manner in airtight containers, except as otherwise provided in §§ 10.251 through 10.257.

* * * * *

4. Section 10.208 is removed.

5. Part 10 is amended by adding a new center heading followed by new §§ 10.241 through 10.248 to read as follows:

## Apparel and Other Textile Articles Under the Andean Trade Promotion and Drug Eradication Act

Sec.
10.241 Applicability.
10.242 Definitions.
10.243 Articles eligible for preferential treatment.
10.244 Certificate of Origin.
10.245 Filing of claim for preferential treatment.
10.246 Maintenance of records and submission of Certificate by importer.
10.247 Verification and justification of claim for preferential treatment.
10.248 Additional requirements for preferential treatment of brassieres.

## Apparel and Other Textile Articles Under the Andean Trade Promotion and Drug Eradication Act

### § 10.241 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to countries that are designated as beneficiary countries under the ATPA. Section 204(b)(3) of the ATPA (19 U.S.C. 3203(b)(3)) provides for the preferential treatment of certain apparel and other textile articles from those ATPA beneficiary countries which the President designates as ATPDEA beneficiary countries. The provisions of §§ 10.241 through 10.248 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to ATPA section 204(b)(3) and Subchapter XXI, Chapter 98, HTSUS.

### § 10.242 Definitions.

When used in §§ 10.241 through 10.248, the following terms have the meanings indicated:

*Apparel articles.* ''Apparel articles'' means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99.15 and 6505.90 of the HTSUS.

*Assembled or sewn or otherwise assembled in one or more ATPDEA beneficiary countries.* ''Assembled'' and ''sewn or otherwise assembled'' when used in the context of production of an apparel or other textile article in one or more ATPDEA beneficiary countries has reference to a joining together of two or more components that occurred in one or more ATPDEA beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

*ATPA.* ''ATPA'' means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

*ATPDEA beneficiary country.* ''ATPDEA beneficiary country'' means a ''beneficiary country'' as defined in § 10.202(a) for purposes of the ATPA which the President also has designated as a beneficiary country for purposes of preferential treatment of apparel and other textile articles under 19 U.S.C. 3203(b)(3) and which has been the subject of a determination by the President or his designee, published in the **Federal Register**, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

*Chief value.* ''Chief value'' when used with reference to llama, alpaca, and vicuña means that the value of those materials exceeds the value of any other single textile material in the fabric or component under consideration, with the value in each case determined by application of the principles set forth in § 10.243(c)(1)(ii).

*Cut in one or more ATPDEA beneficiary countries.* ''Cut'' when used in the context of production of textile luggage in one or more ATPDEA beneficiary countries means that all fabric components used in the assembly of the article were cut from fabric in one or more ATPDEA beneficiary countries, or were cut from fabric in the United States and used in a partial assembly operation in the United States prior to cutting of fabric and assembly of the article in one or more ATPDEA beneficiary countries, or both.

*Foreign.* ''Foreign'' means of a country other than the United States or an ATPDEA beneficiary country.

*HTSUS.* ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

*Knit-to-shape components.* ''Knit-to-shape,'' when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape containing a self-start edge. Minor cutting or trimming will not affect the determination of whether a component is ''knit-to-shape.''

*Luggage.* ''Luggage'' means travel goods (such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel) and brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (for example, physicians' cases, sample cases), and like containers and cases designed to be carried with the person. The term ''luggage'' does not include handbags (that is, pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls). The term ''luggage'' also does not include flat goods (that is, small flatware designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change cases, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles).

*NAFTA.* ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

*Preferential treatment.* ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels as provided in 19 U.S.C. 3203(b)(3).

*Wholly formed fabric components.* ''Wholly formed,'' when used with reference to fabric components, means that all of the production processes, starting with the production of wholly formed fabric and ending with a component that is ready for incorporation into an apparel article, took place in a single country.

*Wholly formed fabrics.* ''Wholly formed,'' when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

*Wholly formed yarns.* ''Wholly formed,'' when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a yarn or

plied yarn, took place in the United States or in one or more ATPDEA beneficiary countries.

**§ 10.243 Articles eligible for preferential treatment.**

(a) *General.* Subject to paragraphs (b) and (c) of this section, preferential treatment applies to the following apparel and other textile articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from any one of the following:

(i) Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in the United States), provided that, if the apparel article is assembled from knitted or crocheted or woven wholly formed fabrics or from knitted or crocheted or woven wholly formed fabric components produced from fabric, all dyeing, printing, and finishing of that knitted or crocheted or woven fabric or component was carried out in the United States;

(ii) Fabrics or fabric components formed, or components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in one or more ATPDEA beneficiary countries, if those fabrics (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, and/or vicuña;

(iii) Fabrics or yarns, provided that apparel articles (except articles classifiable under subheading 6212.10 of the HTSUS) of those fabrics or yarns would be considered an originating good under General Note 12(t), HTSUS, if the apparel articles had been imported directly from Canada or Mexico; or

(iv) Fabrics or yarns that the President or his designee has designated in the **Federal Register** as fabrics or yarns that cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(2) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from a combination of fabrics, fabric components, knit-to-shape components or yarns described in two or more of paragraphs (a)(1)(i) through (a)(1)(iv) of this section;

(3) A handloomed, handmade, or folklore apparel or other textile article of an ATPDEA beneficiary country that the President or his designee and representatives of the ATPDEA beneficiary country mutually agree is a handloomed, handmade, or folklore article and that is certified as a handloomed, handmade, or folklore article by the competent authority of the ATPDEA beneficiary country;

(4) Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or in one or more ATPDEA beneficiary countries, or in both, other than articles entered as articles described in paragraphs (a)(1) through (a)(3) and (a)(7) of this section, and provided that any applicable additional requirements set forth in § 10.248 are met;

(5) Textile luggage assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS;

(6) Textile luggage assembled in one or more ATPDEA beneficiary countries from fabric cut in one or more ATPDEA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States; and

(7) 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 in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries), including apparel articles sewn or otherwise assembled in part but not exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1) of this section.

(b) *Dyeing, printing, finishing and other operations*—(1) *Dyeing, printing and finishing operations.* Dyeing, printing, and finishing operations may be performed on any yarn, fabric, or knit-to-shape or other component used in the production of any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country and subject to the following additional conditions:

(i) In the case of an article described in paragraph (a)(1), (a)(2), or (a)(7) of this section that contains a knitted or crocheted or woven fabric, or a knitted or crocheted or woven fabric component produced from fabric, that was wholly formed in the United States from yarns wholly formed in the United States, any dyeing, printing, or finishing of that knitted or crocheted or woven fabric or component must have been carried out in the United States; and

(ii) In the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country only if that operation is incidental to the assembly process within the meaning of § 10.16.

(2) *Other operations.* An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be disqualified from receiving that treatment by virtue of having undergone one or more operations such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country. However, in the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process within the meaning of § 10.16.

(c) *Special rules for certain component materials*—(1) *Foreign findings, trimmings, interlinings, and yarns*—(i) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains:

(A) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''findings and trimmings'' include, but are not limited to, sewing thread, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips, zippers (including zipper tapes), and labels;

(B) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section

''interlinings'' include only a chest type plate, a ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(C) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(D) Yarns not wholly formed in the United States or in one or more ATPDEA beneficiary countries if the total weight of all those yarns is not more than 7 percent of the total weight of the article.

(ii) *''Cost'' and ''value'' defined.* The ''cost'' of components and the ''value'' of findings and trimmings or interlinings referred to in paragraph (c)(1)(i) of this section means:

(A) The price of the components, findings and trimmings, or interlinings when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the components, findings and trimmings, or interlinings to the place of production if included in that price; or

(B) If the price cannot be determined under paragraph (c)(1)(ii)(A) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the components, findings and trimmings, or interlinings to the port of exportation.

(iii) *Treatment of yarns as findings or trimmings.* If any yarns not wholly formed in the United States or one or more ATPDEA beneficiary countries are used in an article as a finding or trimming described in paragraph (c)(1)(i)(A) of this section, the yarns will be considered to be a finding or trimming for purposes of paragraph (c)(1)(i) of this section.

(2) *Special rule for nylon filament yarn.* An article otherwise described under paragraph (a)(1)(i) through (iii), (a)(2), or (a)(7) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable in subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS and that is entered free of duty from Canada, Mexico, or Israel.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not an ATPDEA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

**§ 10.244 Certificate of Origin.**

(a) *General.* A Certificate of Origin must be employed to certify that an apparel or other textile article being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.241. The Certificate of Origin must be prepared by the exporter in the ATPDEA beneficiary country in the format specified in paragraph (b) of this section. Where the ATPDEA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(1) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

BILLING CODE 8025–01–P

## Andean Trade Promotion and Drug Eradication Act
## Textile Certificate of Origin

| | |
|---|---|
| 1. Exporter Name & Address: | 3. Importer Name & Address: |
| 2. Producer Name & Address: | |
| 4. Description of Article: | |
| 5. Preference Group: | |

| Group | *Each description below is only a summary of the cited CFR provision* | 19 CFR |
|---|---|---|
| A. | Apparel assembled from U.S. formed, dyed, printed and finished fabrics or fabric components, or U.S. formed knit-to-shape components from U.S. or Andean yarns. | 10.243(a)(1)(i) |
| B. | Apparel assembled from Andean chief value llama, alpaca or vicuña fabrics, fabric components, or knit-to-shape components, from Andean yarns | 10.243(a)(1)(ii) |
| C. | Apparel assembled from fabrics or yarns considered as being in short supply in the NAFTA. | 10.243(a)(1)(iii) |
| D. | Apparel assembled from fabrics or yarns designated as not available in commercial quantities in the United States. | 10.243(a)(1)(iv) |
| E. | Apparel assembled from a combination of two or more yarns, fabrics, fabric components, or knit-to-shape components described in preference groups A though D. | 10.243(a)(2) |
| F. | Handloomed, handmade, or folklore textile and apparel goods. | 10.243(a)(3) |
| G. | Brassieres assembled in the U.S. and/or one or more Andean beneficiary countries. | 10.243(a)(4) |
| H. | Textile luggage assembled from U.S. formed fabrics from U.S. yarns. | 10.243(a)(5)&(6) |
| I. | Apparel assembled from Andean formed fabrics, fabric components, or knit-to-shape components from U.S. or Andean yarns, whether or not also assembled, in part, from yarns, fabrics and fabric components described in preference groups A through D. | 10.243(a)(7) |

| | |
|---|---|
| 6. U.S./Andean Fabric Producer Name & Address: | 7. U.S./Andean Yarn Producer Name & Address: |
| 8. Handloomed, Handmade, or Folklore Article: | 9. Name of Short Supply Fabric or Yarn: |

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. I agree to maintain, and present upon request, documentation necessary to support this certificate.

| | | |
|---|---|---|
| 10. Authorized Signature: | | 11. Company: |
| 12. Name: (Print or Type) | | 13. Title: |
| 14. Date: (DD/MM/YY) | 15. Blanket Period<br>From: To: | 16: Telephone:<br>Facsimile: |

BILLING CODE 8025–01–C

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of

the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state ''available to Customs upon request'' in block 2. If the producer and the exporter are the same, state ''same'' in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) Block 4 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 9 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the name of the folklore article or should state that the article is handloomed or handmade of handloomed fabric;

(11) Block 9 should be completed if the article described in block 4 incorporates a fabric or yarn described in preference group C or D and should state the name of the fabric or yarn that has been considered as being in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States. Block 9 also should be completed if preference group E or I applies to the article described in block 4 and the article incorporates a fabric or yarn described in preference group C or D;

(12) Block 10 must contain the signature of the exporter or of the exporter's authorized agent having knowledge of the relevant facts;

(13) Block 14 should reflect the date on which the Certificate was completed and signed;

(14) Block 15 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see § 10.246(b)(4)(ii)). The ''from'' date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 14). The ''to'' date is the date on which the blanket period expires; and

(15) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

**§ 10.245 Filing of claim for preferential treatment.**

(a) *Declaration.* In connection with a claim for preferential treatment for an apparel or other textile article described in § 10.243, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.246(d)(1), the declaration required under this paragraph must be based on a Certificate of Origin that has been completed and properly executed in accordance with § 10.244, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

**§ 10.246 Maintenance of records and submission of Certificate by importer.**

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.245 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include a copy of the Certificate of Origin referred to in § 10.245(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on an apparel or other textile article under § 10.245(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be in writing or must be transmitted electronically through any electronic data interchange system authorized by Customs for that purpose;

(2) If in writing, must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.244(c)(14), ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the ATPDEA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.244 through 10.246, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

**§ 10.247 Verification and justification of claim for preferential treatment.**

(a) *Verification by Customs.* A claim for preferential treatment made under § 10.245, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.246, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.245, the importer:

(1) Must have records that explain how the importer came to the conclusion that the apparel or other textile article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.243(a). If the importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States or in an ATPDEA beneficiary country, the importer must have records that identify the producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.244(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificates of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.243(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

**§ 10.248 Additional requirements for preferential treatment of brassieres.**

(a) *Definitions.* When used in this section, the following terms have the meanings indicated:

(1) *Producer.* ''Producer'' means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in an ATPDEA beneficiary country.

(2) *Entity controlling production.* ''Entity controlling production'' means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in an ATPDEA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabrics formed in the United States.* ''Fabrics formed in the United States'' means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

(4) *Cost.* ''Cost'' when used with reference to fabrics formed in the United States means:

(i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the fabrics to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

(5) *Declared customs value.* ''Declared customs value'' when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price, but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if Customs finds that cost to be unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embroidering and dyeing, printing, and finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components purchased by the producer or entity controlling production, the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, and less the freight, insurance, packing, and other costs incurred in transporting the fabric components to the place of production if included in that price; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if Customs finds that cost to be unreasonable: all reasonable expenses incurred in the growth, production, or manufacture of the fabric components, including the cost or value of materials (which does not include the cost of recoverable scrap generated in the growth, production, or manufacture of the fabric components) and general expenses, but excluding the cost or value of any non-textile materials, and excluding expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric components to the port of exportation.

(6) *Year.* ''Year'' means a 12-month period beginning on October 1 and ending on September 30 but does not include any 12-month period that began prior to October 1, 2002.

(7) *Entered.* ''Entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) *Limitations on preferential treatment*—(1) *General.* During the year that begins on October 1, 2003, and during any subsequent year, articles of a producer or an entity controlling production that conform to the production standards set forth in § 10.243(a)(4) will be eligible for preferential treatment only if:

(i) The aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.243(a)(4) during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.243(a)(4) during that year; or

(ii) In a case in which the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.243(a)(4) and that were entered during the immediately preceding year was at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.243(a)(4) and that were entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under § 10.245, the importer records on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by Customs to the applicable documentation prescribed under paragraph (c) of this section.

(2) *Rules of application*—(i) *General.* For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must have been produced in the manner specified in § 10.243(a)(4) and the articles in question must be entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Articles that are entered under an HTSUS subheading other than the HTSUS subheading which pertains to articles described in § 10.243(a)(4) are not to be considered in determining compliance with the 75 percent

standard specified in paragraph (b)(1)(i) of this section;

(D) For purposes of determining compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section, all articles that conform to the production standards set forth in § 10.243(a)(4) must be considered, regardless of the HTSUS subheading under which they were entered;

(E) Fabric components and fabrics that constitute findings or trimmings are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(F) Beginning October 1, 2003, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(*1*) Will not be eligible for preferential treatment during the following year;

(*2*) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

(*3*) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A new producer or new entity controlling production, that is, a producer or entity controlling production who did not produce or control production of articles that were entered as articles described in § 10.243(a)(4) during the immediately preceding year, must first establish compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(H) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls for the year in question;

(I) A producer would not prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(J) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production;

(K) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance; and

(L) The exclusion references regarding findings and trimmings in paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section apply to all findings and trimmings, whether or not they are of foreign origin.

(ii) *Examples.* The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

*Example 1.* An ATPDEA beneficiary country producer of articles that meet the production standards specified in § 10.243(a)(4) in the first year sends 50 percent of that production to ATPDEA region markets and the other 50 percent to the U.S. market; the cost of the fabrics formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the ATPDEA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabrics formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

*Example 2.* A producer sends to the United States in the first year three shipments of articles that meet the description in § 10.243(a)(4); one of those shipments is entered under the HTSUS subheading that covers articles described in § 10.243(a)(4), the second shipment is entered under the HTSUS subheading that covers articles described in § 10.243(a)(7), and the third shipment is entered under subheading 9802.00.80, HTSUS. In determining whether the minimum 75 percent standard has been met in the first year for purposes of entry of articles under the HTSUS subheading that covers articles described in § 10.243(a)(4) during the following (that is, second) year, consideration must be restricted to the articles in the first shipment and therefore must not include the articles in the second and third shipments.

*Example 3.* A producer in the second year begins production of articles that conform to the production standards specified in § 10.243(a)(4); some of those articles are entered in that year under HTSUS subheading 6212.10 and others under HTSUS subheading 9802.00.80 but none are entered in that year under the HTSUS subheading which pertains to articles described in § 10.243(a)(4) because the 75 percent standard had not been met in the preceding (that is, first) year. In this case the 85 percent standard applies, and all of the articles that were entered under the various HTSUS provisions in the second year must be taken into account in determining whether that 85 percent standard has been met. If the 85 percent was met in the aggregate for all of the articles entered in the second year, in the next (that is, third) year articles of that producer may receive preferential treatment under the HTSUS subheading which pertains to articles described in § 10.243(a)(4).

*Example 4.* An entity controlling production of articles that meet the description in § 10.243(a)(4) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

*Example 5.* Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United States where they are held until the following year; during that following year all of the front subassemblies are shipped to an ATPDEA beneficiary country where they are assembled with elastic strips and labels produced in an Asian country and other fabrics, components or materials produced in the ATPDEA beneficiary country to form articles that meet the production standards specified in § 10.243(a)(4) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the elastic strips and labels is to be disregarded entirely because the strips and labels constitute findings or trimmings for purposes of this section, and all of the fabric in the front subassemblies is countable because it was all formed in the United States and used in the production of articles that were entered in the same year.

*Example 6.* An ATPDEA beneficiary country producer's entire production of articles that meet the description in § 10.243(a)(4) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles shipped in February do not meet the minimum 75 percent standard, the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments, taken together, do meet the 75 percent standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar

year, and the articles covered by the June shipment are placed in a Customs bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The ATPDEA beneficiary country producer may not prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the ATPDEA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

*Example 7.* A producer in the second year begins production of articles exclusively for the U.S. market that meet the production standards specified in § 10.243(a)(4), but the entered articles do not meet the requisite 85 percent standard until the third year. The producer's articles may not receive preferential treatment during the second year because there was no production (and thus there were no entered articles) in the immediately preceding (that is, first) year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential treatment during the third year because the 85 percent standard was not met in the immediately preceding (that is, second) year. However, the producer's articles are eligible for preferential treatment during the fourth year based on compliance with the 85 percent standard in the immediately preceding (that is, third) year.

*Example 8.* An entity controlling production (Entity A) uses five ATPDEA beneficiary country producers (Producers 1–5), all of which produce only articles that meet the description in § 10.243(a)(4); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) which sends all of its production to the United States. A declaration of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that it controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) *Documentation*—(1) *Initial declaration of compliance.* In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with Customs, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable 75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, Customs will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the producer or the entity controlling production should file the declaration of compliance with Customs at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) *Amended declaration of compliance.* If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the Customs office identified in paragraph (c)(4) of this section an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the Customs office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) *Form and preparation of declaration of compliance*—(i) *Form.* The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:

BILLING CODE 8025–01–P

| Andean Trade Promotion and Drug Eradication Act<br>Declaration of Compliance for Brassieres<br>(19 CFR 10.243(a)(4) and 10.248) | |
|---|---|
| 1. Year beginning date: October 1, ____.<br>Year ending date: September 30, ____. | Official U.S. Customs Use Only<br>Assigned number: _____<br>Assignment date: _____ |
| 2. Identity of preparer (producer or entity controlling production):<br><br>Full name and address: | Telephone number: _____<br>Facsimile number: _____<br>Importer identification number: _____ |
| 3. If the preparer is an entity controlling production, provide the following for each producer:<br><br>Full name and address: | Telephone number: _____<br>Facsimile number: _____ |
| 4. Aggregate cost of fabrics formed in the United States that were used in the production of brassieres that were entered during the year: _____ | |
| 5. Aggregate declared customs value of the fabric contained in brassieres that were entered during the year: _____ | |
| 6. I declare that the aggregate cost of fabric formed in the United States was at least 75 percent (or 85 percent, if applicable under 19 CFR 10.248(b)(1)(ii)) of the aggregate declared customs value of the fabric contained in brassieres entered during the year. | |
| 7. Authorized signature:<br>_____<br><br>Date: | 8. Name and title (print or type): |

BILLING CODE 8025–01–C

(ii) *Preparation.* The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3)(i) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see § 24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the ATPDEA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were entered during the year identified in block 1; and

(E) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) *Filing of declaration of compliance.* The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to Customs upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, U.S. Customs Service, 1 Penn Plaza, New York, New York 10119.

(d) *Verification of declaration of compliance*—(1) *Verification procedure.* A declaration of compliance filed under this section will be subject to whatever verification Customs deems necessary. In the event that Customs for any reason is prevented from verifying the statements made on a declaration of compliance, Customs may deny any claim for preferential treatment made

under § 10.245 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to Customs by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles that meet the production standards specified in § 10.243(a)(4) that were exported to the United States and that were entered during the year in question, whether or not a claim for preferential treatment was made under § 10.245. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric. The verification of production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must reflect the production of the finished article which must be referenced to the original purchase order or lot number covering the fabric used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the accounting period and the inventory closing balance.

(2) *Notice of determination.* If, based on a verification of a declaration of compliance filed under this section, Customs determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, Customs will publish a notice of that determination in the **Federal Register.**

6. Part 10 is amended by adding a new center heading followed by new §§ 10.251 through 10.257 to read as follows:

## Extension of ATPA Benefits to Tuna and Certain Other Non-Textile Articles

Sec.
10.251 Applicability.
10.252 Definitions.
10.253 Articles eligible for preferential treatment.
10.254 Certificate of Origin.
10.255 Filing of claim for preferential treatment.
10.256 Maintenance of records and submission of Certificate by importer.
10.257 Verification and justification of claim for preferential treatment.

## Extension of ATPA Benefits to Tuna and Certain Other Non-Textile Articles

### § 10.251 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to ATPA beneficiary countries that have been designated as ATPDEA beneficiary countries. Sections 204(b)(1) and (b)(4) of the ATPA (19 U.S.C. 3203(b)(1) and (b)(4)) provide for the preferential treatment of certain non-textile articles that were not entitled to duty-free treatment under the ATPA prior to enactment of the ATPDEA. The provisions of §§ 10.251–10.257 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to ATPA sections 204(b)(1) and (b)(4).

### § 10.252 Definitions.

When used in §§ 10.251 through 10.257, the following terms have the meanings indicated:

*ATPA.* ''ATPA'' means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

*ATPDEA beneficiary country.* ''ATPDEA beneficiary country'' means a ''beneficiary country'' as defined in § 10.202(a) for purposes of the ATPA which the President also has designated as a beneficiary country for purposes of preferential treatment of products under 19 U.S.C. 3203(b)(1) and (b)(4) and which has been the subject of a finding by the President or his designee, published in the **Federal Register**, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

*ATPDEA beneficiary country vessel.* ''ATPDEA beneficiary country vessel'' means a vessel:

(a) Which is registered or recorded in an ATPDEA beneficiary country;

(b) Which sails under the flag of an ATPDEA beneficiary country;

(c) Which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of those boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country;

(d) Of which the master and officers are nationals of an ATPDEA beneficiary country; and

(e) Of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

*HTSUS.* ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

*Preferential treatment.* ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions in the case of tuna described in § 10.253(a)(1) and free of duty in the case of any article described in § 10.253(a)(2).

*United States vessel.* ''United States vessel'' means a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46 of the United States Code.

### § 10.253 Articles eligible for preferential treatment.

(a) *General.* Preferential treatment applies to any of the following articles, provided that the article in question is imported directly into the customs territory of the United States from an ATPDEA beneficiary country within the meaning of paragraph (b) of this section:

(1) Tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an

ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each; and

(2) Any of the following articles that the President has determined are not import-sensitive in the context of imports from ATPDEA beneficiary countries, provided that the article in question meets the country of origin and value content requirements set forth in paragraphs (c) and (d) of this section:

(i) Footwear not designated on December 4, 1991, as eligible articles for the purpose of the Generalized System of Preferences (GSP) under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467);

(ii) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTSUS;

(iii) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

(iv) Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the GSP.

(b) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not an ATPDEA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

(c) *Country of origin criteria*—(1) *General.* Except as otherwise provided in paragraph (c)(2) of this section, an article described in paragraph (a)(2) of this section may be eligible for preferential treatment if the article is either:

(i) Wholly the growth, product, or manufacture of an ATPDEA beneficiary country; or

(ii) A new or different article of commerce which has been grown, produced, or manufactured in an ATPDEA beneficiary country.

(2) *Exceptions.* No article will be eligible for preferential treatment by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The principles and examples set forth in § 10.195(a)(2) will apply equally for purposes of this paragraph.

(d) *Value content requirement*—(1) *General.* An article may be eligible for preferential treatment only if the sum of the cost or value of the materials produced in an ATPDEA beneficiary country or countries, plus the direct costs of processing operations performed in an ATPDEA beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Commonwealth of Puerto Rico, U.S. Virgin Islands and CBI beneficiary countries.* For the specific purpose of determining the percentage referred to in paragraph (d)(1) of this section, the term ''ATPDEA beneficiary country'' includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country as defined in § 10.191(b)(1). Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands or any CBI beneficiary country must be included in the article prior to its final exportation to the United States from an ATPDEA beneficiary country as defined in § 10.252.

(3) *Materials produced in the United States.* For purposes of determining the percentage referred to in paragraph (d)(1) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico). The principles set forth in paragraph (d)(4)(i) of this section will apply in determining whether a material is ''produced in the customs territory of the United States'' for purposes of this paragraph.

(4) *Cost or value of materials*—(i) *''Materials produced in an ATPDEA beneficiary country or countries'' defined.* For purposes of paragraph (d)(1) of this section, the words ''materials produced in an ATPDEA beneficiary country or countries'' refer to those materials incorporated in an article which are either:

(A) Wholly the growth, product, or manufacture of an ATPDEA beneficiary country or two or more ATPDEA beneficiary countries; or

(B) Substantially transformed in any ATPDEA beneficiary country or two or more ATPDEA beneficiary countries into a new or different article of commerce which is then used in any ATPDEA beneficiary country as defined in § 10.252 in the production or manufacture of a new or different article which is imported directly into the United States. For purposes of this paragraph (d)(4)(i)(B), no material will be considered to be substantially transformed into a new or different article of commerce by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The examples set forth in § 10.196(a), and the principles and examples set forth in § 10.195(a)(2), will apply for purposes of the corresponding context under paragraph (d)(4)(i) of this section.

(ii) *Failure to establish origin.* If the importer fails to maintain adequate records to establish the origin of a material, that material may not be considered to have been grown, produced, or manufactured in an ATPDEA beneficiary country or in the customs territory of the United States for purposes of determining the percentage referred to in paragraph (d)(1) of this section.

(iii) *Determination of cost or value of materials.* (A) The cost or value of materials produced in an ATPDEA beneficiary country or countries or in the customs territory of the United States includes:

(*1*) The manufacturer's actual cost for the materials;

(*2*) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(*3*) The actual cost of waste or spoilage, less the value of recoverable scrap; and

(*4*) Taxes and/or duties imposed on the materials by any ATPDEA beneficiary country or by the United States, provided they are not remitted upon exportation.

(B) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value will be determined by computing the sum of:

(*1*) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(*2*) An amount for profit; and

(*3*) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(5) *Direct costs of processing operations*—(i) *Items included.* For purposes of paragraph (d)(1) of this section, the words ''direct costs of processing operations'' mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Those costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(A) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(B) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(C) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(D) Costs of inspecting and testing the specific merchandise.

(ii) *Items not included.* For purposes of paragraph (d)(1) of this section, the words ''direct costs of processing operations'' do not include items which are not directly attributable to the merchandise under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(A) Profit; and

(B) General expenses of doing business which either are not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(6) *Articles wholly the growth, product, or manufacture of an ATPDEA beneficiary country.* Any article which is wholly the growth, product, or manufacture of an ATPDEA beneficiary country as defined in § 10.252, and any article produced or manufactured in an ATPDEA beneficiary country as defined in § 10.252 exclusively from materials which are wholly the growth, product, or manufacture of an ATPDEA beneficiary country or countries, will normally be presumed to meet the requirement set forth in paragraph (d)(1) of this section.

**§ 10.254 Certificate of Origin.**

A Certificate of Origin as specified in § 10.256 must be employed to certify that an article described in § 10.253(a) being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.251. The Certificate of Origin must be prepared by the exporter in the ATPDEA beneficiary country. Where the ATPDEA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(a) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(b) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

**§ 10.255 Filing of claim for preferential treatment.**

(a) *Declaration.* In connection with a claim for preferential treatment for an article described in § 10.253(a), the importer must make a written declaration that the article qualifies for that treatment. The written declaration should be made by including on the entry summary, or equivalent documentation, the symbol ''J+'' as a prefix to the subheading of the HTSUS in which the article in question is classified. Except in any of the circumstances described in § 10.256(d)(1), the declaration required under this paragraph must be based on a complete and properly executed original Certificate of Origin that covers the article being imported and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

**§ 10.256 Maintenance of records and submission of Certificate by importer.**

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.255 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.255(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on an article under § 10.255(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be on Customs Form 449, including privately-printed copies of that Form, or, as an alternative to Customs Form 449, in an approved computerized format or other medium or format as is approved by the Office of Field Operations, U.S. Customs Service, Washington, DC 20229. An alternative format must contain the same information and certification set forth on Customs Form 449;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph, ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential tariff treatment under the ATPDEA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.254 through 10.256, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

**§ 10.257 Verification and justification of claim for preferential treatment.**

(a) *Verification by Customs.* A claim for preferential treatment made under § 10.255, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.256, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.255, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it meets the country of origin and value content requirements set forth in § 10.253(c) and (d). A properly completed Certificate of Origin in the form prescribed in § 10.254(b) is a record that would serve this purpose;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.253(b)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

## PART 163—RECORDKEEPING

7. The authority citation for Part 163 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

8. The Appendix to Part 163 is amended by adding three new listings under section IV in numerical order to read as follows:

**Appendix to Part 163—Interim (a)(1)(A) List**

* * * * *

IV. * * *

§ 10.246 ATPDEA Textile Certificate of Origin
§ 10.248 ATPDEA Declaration of Compliance for Brassieres
§ 10.256 ATPDEA Non-textile Certificate of Origin

* * * * *

**Robert C. Bonner,**

*Commissioner of Customs.*

Approved: February 27, 2003.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 03–6867 Filed 3–24–03; 8:45 am]

BILLING CODE 4820–02–P

Federal Register

Tuesday,
March 25, 2003

# Part III

# Environmental Protection Agency

## 40 CFR Part 141

## Minor Clarification of National Primary Drinking Water Regulation for Arsenic; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 141**

**[FRL–7472–5]**

## Minor Clarification of National Primary Drinking Water Regulation for Arsenic

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Today, EPA is revising the rule text in its January 2001 final rule that established the 10 parts per billion arsenic drinking water standard to express the standard as 0.010 mg/L, in order to clarify the implementation of the original rule.

**DATES:** This regulation is effective April 24, 2003. For purposes of judicial review, this final rule is promulgated as of 1 p.m. Eastern Time on March 25, 2003.

**ADDRESSES:** The official public docket for this rule is located at EPA's Water Docket, in the EPA Docket Center (EPA/DC), EPA West, Rm B102, 1301 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** For general information contact the EPA Safe Drinking Water Hotline at (800) 426–4791. The Hotline operates Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. ET. For technical information contact, Richard Reding, Office of Ground Water and Drinking Water (MC–4607M), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460, (202) 564–4656, email: *Reding.Richard@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Who Is Regulated by This Action?*

Entities potentially regulated by this regulation are public water systems (PWSs). All community and non-transient non-community water systems must comply with the revised arsenic drinking water standard beginning on January 23, 2006. A community water system (CWS) means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Non-transient non-community water system (NTNCWS) means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year. Primacy States are required to revise their programs to adopt the new arsenic standard by January 22, 2003 (unless an extension has been granted). Categories and entities potentially regulated by this action include the following:

| Category | Examples of potentially regulated entities |
|---|---|
| State, Tribal and Local Government | State, Tribal or local government-owned/operated water supply systems using ground water, surface water or mixed ground water and surface water. |
| Federal Government | Federally owned/operated community water supply systems using ground water, surface water or mixed ground water and surface water. |
| Industry | Privately owned/operated community water supply systems using ground water, surface water or mixed ground water and surface water. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 141.11 and 141.62 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*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 ID No. OW–2002–0057. 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 Water Docket in the EPA Docket Center, (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. For access to docket material, please call (202) 566–2426 to schedule an appointment.

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 view public comments, to 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. 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 section I.B.1. Once in the system, select ''search,'' then key in the appropriate docket identification number.

### II. What is EPA's Statutory Authority for This Final Rule?

SDWA section 1412(b)(12)(A) required EPA to publish a revised arsenic standard. On January 22, 2001, EPA published a final rule revising the existing arsenic drinking water standard from 50 parts per billion (ppb) to 10 ppb, with a compliance date of January 23, 2006 (66 FR 6976–7066). Under EPA's regulations at 40 CFR 142.12, States that wish to maintain primary

enforcement responsibility for drinking water standards must revise their programs to adopt new or revised Federal regulations. Today's final rule clarifies one issue raised by stakeholders concerning the standard published in January 2001.

## III. What Is EPA Doing Today?

Today, EPA is revising the rule text to express the new arsenic maximum contaminant level (MCL) as 0.010 mg/L instead of 0.01 mg/L. EPA is making this minor regulatory amendment in response to a concern raised by a number of States and other stakeholders that State laws adopting the Federal arsenic standard as 0.01 mg/L might allow rounding of monitoring results above 0.01 mg/L so that the effective standard (in consideration of rounding of results) would be 0.014 mg/L (or 14 ppb), not 0.010 mg/L (10 ppb). These States and other stakeholders suggested that the rule text be revised to clarify the rounding issue and avoid the potential for confusion about how to evaluate compliance monitoring results that are greater than 10 ppb. In response, EPA solicited public comment on today's amendment in a proposed rulemaking that was published on December 23, 2002 (67 FR 78203). Although EPA considers this amendment to be a minor clarification of the intent of the January 2001 rule, EPA chose to conduct a formal rulemaking to provide a full opportunity for public comment with respect to the rounding issue.

## IV. Summary of Public Comments on Today's Regulatory Change

The comment period on the December 2002 proposed rule closed on January 22, 2003. Most commenters strongly supported today's action; other commenters indicated a concern. A summary of these comments follows. The comments and EPA's responses are included in the Docket for today's final rule.

In expressing support for making today's clarification, some commenters requested extensions of the compliance deadlines that were specified in the January 2001 rule. EPA does not agree that an extension of the compliance deadline is necessary or appropriate. The EPA Administrator is firmly committed to maintaining the January 23, 2006, compliance date for a new arsenic standard (66 FR 20581, April 23, 2001). EPA also has been clear that the 2006 compliance deadline applies to all systems with arsenic levels above 10 ppb. As noted in the December 2002 proposal to clarify the rule text, every aspect of the existing final rule and all analyses supporting the rule establish 10 ppb as the new arsenic standard. In addition, EPA made clear in several contexts that rounding down monitoring results in the range of 11 to 14 ppb to 10 ppb was not allowed under the rule (*e.g.*, in a guidance memorandum (EPA 2002a), in EPA's document ''Implementation Guidance for the Arsenic Rule'' (EPA 2002b), and in the training conducted by EPA (EPA 2002c) on the rule since its issuance). For systems that may need additional time to come into compliance with the rule for cost or technical reasons, there is an exemption process under SDWA section 1416 under which eligible systems may receive additional time, if necessary. This process was fully addressed in the January 22, 2001, rule (66 FR 6988).

In expressing support for making today's clarification, some commenters also requested extensions of the deadlines to submit revised arsenic primacy packages that were specified in the January 2001 rule. With respect to the deadline for States or Tribes to submit primacy revision packages, because the Agency has been clear that no rounding is permitted under the Federal rule, State programs that allow systems to round compliance monitoring results that are greater than 10 ppb down to 10 ppb will not be approved. The provisions in 40 CFR 142.12, for EPA (at the EPA regional office level) to grant extensions of the two-year period for adoption of the revised arsenic regulation as appropriate on a case-by-case basis, are sufficient to accommodate the commenters' requests for additional time for submission or revision of primacy packages. EPA notes that States routinely request and receive extensions of their primacy deadline.

One commenter believes that State and local governments should have maximum flexibility in implementing Federal regulatory requirements. The commenter does not support today's clarification because it limits the ability of State and local governments to mitigate adverse financial effects of the arsenic standard, especially for rural or low income systems. The commenter suggested States should have the flexibility to use public education at systems where arsenic levels are between 10 and 14 ppb instead of requiring compliance at 10 ppb. However, EPA does not agree that the final arsenic rule, as promulgated in January 2001, would allow the use of public education rather than compliance with the 10 ppb standard at any system where arsenic levels exceed the 10 ppb standard and are between 10 and 14 ppb. As EPA discussed in the January 22, 2001, preamble, EPA is aware of the impact that the new arsenic standard will have on certain systems. As discussed in the January 2001 final rule (67 FR 6992), the Agency is implementing many financial and technical assistance actions to mitigate this impact with an emphasis on assisting small systems. In addition, EPA notes that there are certain flexibilities already built into the statutory and regulatory structure. For example, the final arsenic rule discusses the flexibility for small systems to receive an extension of up to nine years to comply with the new arsenic standard through the exemption process provided in SDWA section 1416.

One commenter submitted comments that were not relevant to the December 2002 proposal to revise the arsenic rule text to express the 10 ppb standard as 0.010 mg/L instead of 0.01 mg/L. EPA is not addressing these comments because, in the December 2002 proposal, EPA clearly informed readers that EPA was not requesting and would not respond to comment on any other issue associated with the arsenic standard or its implementation. As noted in the December 2002 proposal and in the April 17, 2002, (67 FR 19037) announcement of the preliminary results of EPA's review of existing drinking water standards, EPA will continue to evaluate the expert analysis, the public comment received after publication of the final rule, and other relevant information on the arsenic drinking water standard, as part of the next six-year review of drinking water standards, which is to be completed in August of 2008.

## V. Administrative Requirements

### *A. Executive Order 12866: Regulatory Planning and Review*

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

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

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

(3) materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs or the rights and obligations of recipients thereof; or

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

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

*B. Paperwork Reduction Act*

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et.seq.* This final rule merely clarifies the way the 10 ppb MCL for arsenic is expressed in regulatory text.

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

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

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)—(5). In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's (SBA's) Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's final rule on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register**, (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration (SBA), and expressed its intention to use the alternative definition for regulatory flexibility assessments under the RFA for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this regulation.

This final rule imposes no cost on any entities over and above those imposed by the final arsenic rule, because that rule was developed, costed, and evaluated as 10 ppb. This final rule merely clarifies the way the 10 ppb MCL is expressed in regulatory text. Therefore, after considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. This final rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. This final rule would not change the costs to State, local, or Tribal governments as estimated in the final arsenic rule, because that rule was developed, costed, and evaluated as 10 ppb, and this final rule merely clarifies the way the 10 ppb MCL is expressed in regulatory text. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule is not subject to the requirements of section 203 of the UMRA.

*E. Executive Order 13132: Federalism*

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

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. There is no cost to State and local governments, and this final rule does not preempt State law. This final rule imposes no cost on any State, or local governments over and above those imposed by the final arsenic rule because that rule was developed, costed, and evaluated as 10 ppb. This final rule merely clarifies the way the 10 ppb MCL is expressed in regulatory text. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials. EPA received no comment on Federalism issues from State or local officials.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, (November 9, 2000)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''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. There is no cost to Tribal governments, and this final rule does not preempt Tribal law. This final rule imposes no cost on any Tribal government over and above those imposed by the final arsenic rule because that rule was developed, costed and evaluated as 10 ppb. This final rule merely clarifies the way the 10 ppb MCL is expressed in regulatory text. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicited comment on the proposed rule from Tribal officials. EPA received no comment from Tribal officials.

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

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 final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This final rule merely clarifies the way the 10 ppb MCL is expressed in regulatory text.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This final 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.

*I. National Technology Transfer and Advancement Act*

As noted in the December 2002 proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material 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 action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on April 24, 2003.

## VI. References

EPA 2002a ''Calculation of Compliance for the New Arsenic MCL'', Cynthia C. Dougherty memorandum, January 25, 2002.

EPA 2002b ''Implementation Guidance for the Arsenic Rule'', EPA16–K–02–018, August 2002, Section I–A.4, and Figure II–1.

EPA 2002c ''Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring'', Albuquerque, New Mexico, April 15–16, 2002, pp. 8–9.

## List of Subjects for 40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: March 19, 2003.

**Christine Todd Whitman,**

*Administrator.*

For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

## PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

**Authority:** 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.23 is amended:

a. By revising the entry for arsenic in the table in (a)(4)(i).

b. By revising footnote 15 to the table in (k)(1).

The revisions read as follows:

**§ 141.23 Inorganic chemical sampling and analytical requirements.**

* * * * *

(a) * * *

(4) * * *

(i) * * *

DETECTION LIMITS FOR INORGANIC CONTAMINANTS

| Contaminant | MCL (mg/l) | Methodology | Detection limit (mg/1) |
|---|---|---|---|
| * | * | * | * |
| Arsenic | 0.010 [6] | Atomic Absorption; Furnace | 0.001 |
| | | Atomic Absorption; Platform—Stabilized Temperature | 0.0005 [7] |
| | | Atomic Absorption; Gaseous Hydride | 0.001 |
| | | ICP-Mass Spectrometry | 0.0014 [8] |

* * * * * * *

[6] The value for arsenic is effective January 23, 2006. Until then, the MCL is 0.05 mg/L.

[7] The MDL reported for EPA Method 200.9 (Atomic Absorption; Platform—Stabilized Temperature) was determined using a 2x concentration step during sample digestion. The MDL determined for samples analyzed using direct analyses (*i.e.*, no sample digestion) will be higher. Using multiple depositions, EPA 200.9 is capable of obtaining MDL of 0.0001 mg/L.

[8] Using selective ion monitoring, EPA Method 200.8 (ICP-MS) is capable of obtaining a MDL of 0.0001 mg/L.

* * * * *

(k) * * *

(1) * * *

[15] Starting January 23, 2006, analytical methods using the ICP–AES technology, may not be used because the detection limits for these methods are 0.008 mg/L or higher. This restriction means that the two ICP–AES methods (EPA Method 200.7 and SM 3120 B) approved for use for the MCL of 0.05 mg/L may not be used for compliance determinations for the revised MCL of 0.010 mg/L. However, prior to January 23, 2006, systems may have compliance samples analyzed with these less sensitive methods.

* * * * *

3. Section 141.62(b) is amended by revising the entry ''(16)'' for arsenic in the table to read as follows:

**§ 141.62 Maximum contaminant levels for inorganic contaminants.**

* * * * *

(b) * * *

| Contaminant | MCL (mg/l) |
|---|---|
| * * * * * | |
| (16) Arsenic | 0.010 |
| * * * * * | |

**Subpart O—[Amended]**

4. Amend § 141.154 by revising paragraphs (b) introductory text and (f) to read as follows:

**§ 141.154 Required additional health information.**

* * * * *

(b) Ending in the report due by July 1, 2001, a system which detects arsenic at levels above 0.025 mg/L, but below the 0.05 mg/L, and beginning in the report due by July 1, 2002, a system that detects arsenic above 0.005 mg/L and up to and including 0.010 mg/L:

* * * * *

(f) Beginning in the report due by July 1, 2002, and ending January 22, 2006, a community water system that detects arsenic above 0.010 mg/L and up to and including 0.05 mg/L must include the arsenic health effects language prescribed by Appendix A to Subpart O of this part.

5. Amend Appendix A to Subpart O by revising the entry for arsenic under ''Inorganic contaminants:'' to read as follows:

APPENDIX A TO SUBPART O—REGULATED CONTAMINANTS

| Contaminant (units) | Traditional MCL in mg/L | To convert for CCR, multiply by | MCL in CCR units | MCLG | Major sources in drinking water | Health effects language |
|---|---|---|---|---|---|---|
| * | * | * | | * | * | * |
| Inorganic contaminants | | | | | | |
| * | * | * | | * | * | * |
| Arsenic (ppb) | [1] 0.010 | 1000 | [1] 10. | [1] 0 | Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes. | Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer. |
| * | * | * | | * | * | * |

[1] These arsenic values are effective January 23, 2006. Until then, the MCL is 0.05 mg/L and there is no MCLG.

**Subpart Q—[Amended]**

6. Amend Appendix B to Subpart Q by revising entry ''9. Arsenic'' under ''C. Inorganic Chemicals (IOCs)'', to read as follows:

APPENDIX B TO SUBPART Q OF PART 141—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

| Contaminant | MCLG [1] mg/L | MCL [2] mg/L | Standard health effects language for public notification |
|---|---|---|---|
| * | * | * | * * * * * |
| 9. Arsenic [11] ..... | 0 | 0.010 | Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer. |
| * | * | * | * * * * * |

**Appendix B—Endnotes**
1. MCLG—Maximum contaminant level goal.
2. MCL—Maximum contaminant level.

* * * * * * *

11. These arsenic values are effective January 23, 2006. Until then, the MCL is 0.05 mg/L and there is no MCLG.

* * * * *

[FR Doc. 03–7048 Filed 3–24–03; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Tuesday,
March 25, 2003

# Part IV

# Department of Transportation

## Research and Special Programs Administration

## 49 CFR Part 172

## Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**Research and Special Programs Administration**

**49 CFR Part 172**

**[Docket No. RSPA–02–12064 (HM–232)]**

**RIN 2137–AD67**

## Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The Research and Special Programs Administration is establishing new requirements to enhance the security of hazardous materials transported in commerce. Shippers and carriers of certain highly hazardous materials must develop and implement security plans. In addition, all shippers and carriers of hazardous materials must assure that their employee training includes a security component.

**EFFECTIVE DATE:** This final rule is effective March 25, 2003.

**FOR FURTHER INFORMATION CONTACT:** Susan Gorsky, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On May 2, 2002, the Research and Special Programs Administration (RSPA, we) published a notice of proposed rulemaking (NPRM) to enhance the security of hazardous materials in transportation (67 FR 22028). Proposals for amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) included a requirement for motor carriers registered with the agency to maintain a copy of their current registration certificate on each motor vehicle. We further proposed to require shipping papers to include the name and address of the consignor and consignee and the shipper's DOT Hazmat Registration number, if applicable. In addition, we proposed to require shippers and carriers of certain highly hazardous materials to develop and implement security plans. We also proposed to require hazardous materials shippers and carriers to assure that their employee training includes a security component. The NPRM provided a 30-day comment period.

On May 23, 2002, in response to a number of requests, we extended the comment period for the NPRM an additional 30 days (67 FR 36138). The comment period closed July 3, 2002.

In addition, on July 16, 2002, RSPA and the Federal Motor Carrier Safety Administration (FMCSA) published an advance notice of proposed rulemaking (ANPRM) to examine the need for enhanced security requirements for hazardous materials transported by motor carriers (67 FR 46622). The two agencies are seeking comments on the feasibility of specific security enhancements and the potential costs and benefits of deploying such enhancements. Security measures addressed in the ANPRM include escorts, vehicle tracking and monitoring systems, emergency warning systems, remote shut-offs, direct short-range communications, notification to State and local authorities, and operational measures. The comment period for the ANPRM was extended until November 15, 2002. Late-filed comments will be considered to the extent feasible.

In this final rule, we are adopting the following revisions to the HMR to enhance the security of hazardous materials transported in commerce:

—Shippers and carriers subject to the registration requirements in 49 CFR part 107 or who offer or transport select agents and toxins regulated by the Centers for Disease Control and Prevention (CDC) must develop and implement security plans.

—Hazmat employers must provide security training to their hazmat employees. Hazmat employees of companies required to have a security plan under this final rule must be trained in the plan's specifics. All hazmat employees must receive training that provides an awareness of the security issues associated with hazardous materials transportation and possible methods to enhance transportation security. This training must also include a component covering how to recognize and respond to possible security threats.

When conducting inspections at shipper and other facilities, DOT inspectors will be looking for security plans and training records related to security. If violations are found, appropriate penalty action will be initiated. Baseline penalties for these violations will be provided in a civil penalty rulemaking that we expect to issue in the near future.

### II. Analysis of Comments

We received over 270 comments on the May 3, 2002, NPRM from hazardous materials shippers, carriers, industry associations, and State and local government agencies. Commenters unanimously support the NPRM's goal of enhancing the secure transportation of hazardous materials. However, most commenters have significant concerns about some or all of the specific proposals in the NPRM. For example, some commenters suggest that the NPRM proposals do not provide an appropriate balance between security and economic goals. In addition, some commenters oppose some or all of the proposed security requirements because they would not have prevented the September 11, 2001, terrorist attacks. Several commenters also suggest that we should defer to the Transportation Security Administration (TSA) or the proposed Department of Homeland Security on security issues. Further, many commenters express reservations about the scope of the NPRM and the applicability of some of its provisions to most shipments of hazardous materials. As well, a significant proportion of commenters oppose some or all of the proposals concerning registration numbers and certificates, shipping documentation requirements, security plans, and security training. Finally, many commenters suggest that we seriously underestimated the potential cost impacts of the proposals in the NPRM. These comments are discussed in detail below.

#### *A. Security Versus Economic Efficiency*

Several commenters express concern that the NPRM proposals in the aggregate will result in unacceptable economic burdens on the industry and will adversely affect the efficiency with which hazardous materials are routinely transported. ''We also are concerned that the proposed measures will be expensive to implement and will introduce inefficiencies to the manner in which hazardous materials are transported. In responding to the events of September 11th, we must not compromise our ability to move large amounts of hazardous materials in an efficient, cost-effective manner. Introducing inefficiencies to our freight transportation system helps further the terrorists' goals of disrupting the American way of life.'' (American Trucking Associations)

As we stated in the NPRM, hazardous materials are essential to the economy of the United States and the well-being of its people. Our goal in this rulemaking is to implement security requirements that will be effective in preventing hazardous materials from being used as tools of destruction and terror while permitting continued transportation of these essential products. We applaud those in the industry who have recognized their responsibility for

enhanced security for the products they manufacture and transport and have developed and implemented thorough and detailed security programs. We do not agree that the imposition of prudent, common-sense security measures will cause massive disruptions in the movement of hazardous materials. We recognize that the provisions proposed in the NPRM and adopted, with modifications, in this final rule, will impose new costs of doing business on both hazardous materials shippers and carriers. As discussed in the following sections, in this final rule we revised certain proposals in response to comments on the NPRM to increase the effectiveness and reduce potential costs impacts of the new security provisions.

Several commenters note that the security measures proposed in the NPRM would not have prevented the September 11th terrorist attacks, the 1993 attack on the World Trade Center, or the 1995 attack on the Murrah Building in Oklahoma City. Nowhere in the NPRM do we state that the proposed security requirements would have prevented past attacks. Rather, we discussed the September 11th terrorist atrocities to indicate the heightened risk of terrorism with which we all now live and the need to reassess and address security vulnerabilities in all areas of our public and private lives. The discussion of the attack on the Murrah Building was intended as an illustration of the devastating consequences that can result from a criminal or terrorist act involving hazardous materials and to provide an estimate of the economic costs of such an act. We cannot limit our actions on security to efforts to prevent terrorist attacks that have already occurred. It is incumbent on everyone responsible for the safety and security of the United States to proactively assess future terrorist threats and take actions to try to prevent future attacks. We believe that the new requirements in this final rule will enhance the security of hazardous materials in transportation and, thus, help to deter and prevent terrorists from using hazardous materials in the transportation system as weapons of destruction or intimidation.

*B. Security Authority*

Some commenters question whether RSPA is the appropriate agency to issue transportation security regulations. These commenters suggest that the Transportation Security Agency (TSA) or the proposed Department of Homeland Security would be better suited to issue transportation security-related regulations. One commenter points out that TSA has been given the responsibility for security in all modes of transportation, and that TSA has been authorized to issue, rescind and revise such regulations as are necessary to carry out the functions of the Administration.

The HMR are promulgated under the mandate in § 5103(b) of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*, as amended by § 1711 of the Homeland Security Act of 2002, Pub. L. 107–296) that the Secretary of Transportation ''prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.'' Section 5103(b)(1)(B) provides that the HMR ''shall govern safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate.''

Hazardous materials shippers and carriers should be aware that this final rule is the first step in what may be a series of rulemakings to address the security of hazardous materials shipments. The joint RSPA–FMCSA ANPRM described above may result in one or more proposals to require specific security measures for hazardous materials that pose a significant security risk in transportation. In addition, TSA is developing regulations that are likely to impose additional requirements beyond those established in this final rule. We consult and coordinate with TSA concerning security-related hazardous materials transportation regulations and will continue to do so after TSA becomes part of the new Department of Homeland Security.

*C. Industry Consensus Standards*

One commenter suggests that we should work with the hazardous materials industry to develop consensus standards for hazardous materials transportation security. ''Instead of implementing its proposals, RSPA should hold one or more public meetings to solicit recommendations from shippers, carriers, and other members of the interested public as to security enhancements, and as to regulatory approaches, that will accomplish more, and do so more efficiently.'' (National Small Shipments Traffic Conference, Inc., and the Health and Personal Care Logistics Conference, Inc.) We appreciate this suggestion; indeed, we are aware that a number of industry associations have developed and disseminated recommendations for enhancing the security of hazardous materials and expect that they will form the basis for many individual company plans. However, we do not agree that a consensus-standards approach is appropriate for this rulemaking. Consensus standards generally are specification standards; that is, they set forth specific requirements for achieving a regulatory goal. One of the goals of this final rule is to establish a performance standard for hazardous materials transportation security plans. Performance standards generally permit a regulated entity to determine the specific measures necessary to achieve compliance with the established performance goal. In the case of hazardous materials transportation security, the flexibility provided by a performance standard permits a company to implement a security plan that is tailored to its specific circumstances and operations.

A consensus-standards process is a lengthy process. It can take many months or even years for the parties developing such a standard to reach consensus on the appropriate measures to be implemented. The security threat is real and ongoing. We do not have the time to spend on development of a consensus standard for hazardous materials transportation security.

*D. Registration Certificates*

Currently, each motor carrier transporting certain classes or divisions of hazardous materials is required to file with RSPA a registration statement and pay an annual fee (49 CFR part 107). A Certificate of Registration (certificate), which includes a U.S. DOT Hazmat Registration Number, is then issued by RSPA to the carrier. A carrier must display its registration number on a document carried on each motor vehicle, but need not maintain a copy of the certificate itself on each vehicle. The NPRM proposed to require each motor carrier registered with RSPA to maintain a copy of its current registration certificate on each motor vehicle used to transport hazardous materials. We suggested that the actual certificate could assist State and local law enforcement personnel to determine whether a carrier is a legitimate transporter of hazardous materials.

Commenters overwhelmingly oppose this proposal, primarily because the registration system as currently structured is not designed to make determinations as to the legitimacy of registrants. ''[A] valid registration certificate is no indication that a transporter is 'legitimate.' It is not an endorsement of regulatory compliance. It is simply proof of payment.'' (Institute of Makers of Explosives) Commenters also note that the registration system has no relevance to transportation security. ''[T]he act of registering and obtaining a DOT registration certificate and number * * * does nothing to ensure that the

registrant is not a potential risk to transport security. * * * In no case is any background investigation conducted before registering an applicant, or even investigation to ensure that the applicant is a bona fide company legitimately engaged in the offering for transport and/or transport of hazardous materials.'' (The Conference on the Safe Transportation of Hazardous Articles, Inc.) In addition, commenters suggest that a registration certificate can easily be copied or falsified. Even those commenters who support the proposal for motor carriers to maintain a copy of their registration certificates on transport vehicles state that the proposal will not enhance transportation security.

We have reconsidered this issue in light of the overwhelming opposition expressed by commenters to this proposal, and it is not adopted in this final rule. We agree with commenters that, absent significant changes to the current registration system, the mere presence of a registration certificate in a motor vehicle transporting hazardous materials will do little to enhance transportation security or to assist enforcement personnel to verify the legitimacy of hazardous materials carriers.

*E. Shipping Papers*

Currently, the HMR generally require each person who offers a hazardous material for transportation to describe the material on a shipping paper. However, there is no requirement for a shipping paper to include the name and address of the person offering the shipment or the person to whom the shipment will be delivered. The NPRM proposed to require each shipping paper to include the name of the shipment consignor and the address from which the shipment originates and the name and address of each person to whom the shipment will be delivered. In addition, we proposed to require each shipping paper to include the U.S. DOT Hazmat Registration Number, if applicable, of the person offering the shipment for transportation. The proposal was intended to assure that shipping papers included information to assist law enforcement personnel to promptly ascertain the legitimacy of hazardous materials shipments during routine or random roadside inspections and to identify suspicious or questionable situations where additional investigation may be necessary.

As with the proposal to require motor carriers to maintain copies of registration certificates in vehicles transporting hazardous materials, commenters overwhelmingly oppose the proposal to require shippers to include registration numbers on shipping papers. Commenters say that the registration program is not designed to determine whether shippers are ''legitimate'' and that the proposed requirement will not enhance shipment security. In addition, commenters suggest that a requirement to include registration numbers on shipping papers would be expensive to implement because many shippers would have to modify computer systems and shipping paper forms to include the new information. ''Configuring computer systems to provide new data on shipping documents will cause significant problems for shippers, carriers, freight forwarders, brokers, agents, and others. Available display fields are limited and companies will need to redirect their limited Information Technology (IT) resources to reprogram their information management systems.'' (Dangerous Goods Advisory Council) While we believe that commenters have overstated the costs that might be incurred to modify information systems to accommodate the proposed registration number requirement, we agree that the paperwork burden is not justified by the limited security benefits that might result. Therefore, the registration number proposal is not adopted in this final rule.

A number of commenters support the proposal to include the names and addresses of consignors and consignees on shipping papers. ''This provision, to include the name of the shipment consignor and the address of the person to whom the shipment will be delivered, is already widely in use by most companies that ship hazardous materials and therefore is readily acceptable.'' (Dow Chemical Company) Similarly, ''[i]ndustry routinely prepares thousands of shipping papers each year and the requirement that the addresses of the consignor and consignee appear on such documents should not pose a problem or burden.'' (Nuclear Energy Institute)

Other commenters, however, express serious reservations about the proposal to require consignor and consignee names and addresses on shipping papers. Most commenters question whether such a requirement would actually make it easier to identify suspicious shipments, as stated in the NPRM, without a system in place to verify the consignor and consignee information provided. ''Establishing the legitimacy of any consignor or consignee, and their respective addresses, requires knowledge and information not 'promptly ascertainable' from the roadside more than a thousand miles from the consignor and consignee as indicated in the shipping paper.'' (The Conference on the Safe Transportation of Hazardous Articles, Inc.) As well, commenters suggest that the proposal is unnecessarily broad and would apply to shipments of hazardous materials that pose little or no security threat. In addition, commenters say that, while the proposed requirement for consignor/consignee names and addresses on shipping papers may have some security benefit for motor carrier operations, it is not appropriate for all modes of transportation. Rail carriers, for example, suggest that the proposal would result in little or no security benefit for rail car transportation. ''Adding information to the shipping papers might be useful to a law enforcement officer stopping a truck on the highway * * * but would add nothing to rail security. * * * The carload rail network is a fixed network that serves only those shippers connecting to it. The identity and location of every rail car shipper is known and only specific destinations can be reached by rail. The security issues addressed by the proposed street address requirement are simply not present in rail transportation.'' (CSX Transportation)

Further, shippers and carriers of specific classes and types of materials cite operational difficulties that they say will make it difficult to comply with the proposed new requirement. Hazardous waste generators suggest that the proposed requirement to include consignor and consignee names and addresses on shipping papers is redundant for hazardous waste shipments because the EPA hazardous waste manifest already includes sufficient information for tracking hazardous wastes from origin to destination. Other commenters are concerned that the NPRM proposal concerning shipping papers did not consider the positive security implications of electronic tracking systems that are utilized by a number of shippers and carriers to monitor shipments. ''[There are] superior technology and tracking systems in place that not only track all shipments but also the vehicle or container used to transport the freight. Unfortunately, RSPA does not give indication that it has considered the advanced or enhanced security benefits gained from having such a system in place. RSPA should recognize and waive any proposed requirements for carriers and companies with these type information

systems in place * * * '' (FedEx Express)

Commenters representing shippers and carriers of hazardous materials used in agricultural applications note that many of the locations to which they deliver do not have street addresses, making it difficult to complete a shipping paper as proposed in the NPRM. ''[Agricultural retailers] often deliver their product to farm fields that don't have addresses, or to farms with rural addresses, and in some cases in one State, no addresses. * * * Many applicators intimately know the customer's fields they are delivering to and thus don't need addresses. Some use maps or air photos that show the fields or sections of fields that need the products applied.'' (Agricultural Retailers Association) Representatives of shippers and carriers of hazardous materials used at construction sites have similar concerns. Shippers and carriers of compressed gas cylinders used in medical care and heating oil, diesel fuel, propane, gasoline, and similar materials that use individual motor vehicles to deliver product to multiple locations point out that drivers frequently make changes to their delivery schedules or make emergency or unscheduled deliveries in the course of a single day, so that a shipping paper with a list of delivery locations completed in the morning would have to be significantly altered by the driver during the course of the day as his delivery schedule is modified. ''It is common practice to have multiple deliveries of fuel throughout the day. The shipment locations may be known for some deliveries, but there are numerous instances where the location of a particular delivery is not known until the truck has already begun its route. In other words, not every gallon of petroleum is accounted for when loaded at the bulk plant.'' (BOC Oil Company and others) Finally, shippers of so-called ''blind shipments'' of hazardous materials suggest that they would be adversely affected by the proposal. Blind shipments are transported under product trading transactions in which the receiving person is not provided information about the true origin of the shipments delivered to them and the shipper may not know the true destination of the shipment. ''Thousands of shipments are made from unnamed locations or from shippers acting as agents for suppliers who do not wish to be identified for business reasons. Perhaps an equal number of shipments are made to unnamed consignees. This NPRM would eliminate this practice resulting in the loss of millions of dollars in revenue annually for shippers with no increase in security.'' (Compressed Gas Association)

We do not agree with commenters that the proposed requirement for consignor and consignee names on shipping papers would provide little or no security benefit. In the absence of requirements for route plans or electronic tracking, the name and address of the shipment consignor and consignee can help law enforcement personnel determine whether a shipment has been unreasonably diverted and, thus, whether further investigation is warranted. However, having considered the adverse comments received on this proposal, we are not adopting it in this final rule. Instead, we are considering modified procedures for making consignor and consignee information available to law enforcement personnel. A modified procedure may be proposed in a future rulemaking. We note in this regard that the UN Recommendations on the Transport of Dangerous Goods require the name and address of both the shipment consignor and consignee to be included on shipping papers (chapter 5.4.1.3). A similar requirement is also in the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (chapter 4.1.6). Moreover, a provision to require the consignor and consignee name and address has been adopted by the International Maritime Organization for inclusion in Amendment 3.1 of the International Maritime Dangerous Goods Code. We also note that the U.S. Customs Service has issued a final rule to require consignor/consignee information on bills of lading for all cargoes entering the United States (67 FR 66318; October 31, 2002).

*F. Security Plans*

The NPRM proposed a new subpart I in part 172 to require persons subject to the registration requirements in subpart G of part 107 and persons who offer or transport select agents and toxins regulated by CDC in 42 CFR part 73 to develop and implement written security plans. Those persons required to register under subpart G of part 107 include persons who offer for transportation or transport: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) more than 25 kg (55 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material; (3) more than 1 L (1.06 qt) per package of a material poisonous by inhalation in Hazard Zone A; (4) a shipment in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gal) for liquids or gases or greater than 13.24 cubic meters (468 cubic feet) for solids; (5) a shipment in a non-bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding is required; and (6) a shipment that requires placarding. Select agents and toxins are materials regulated by CDC because they have the potential to pose a severe threat to the public health and safety. We suggested that a security plan should focus not only on the potential threats posed by the material being transported, but on personnel, facility, and en route security issues, as well. The NPRM did not include a prescriptive list of actions that must be included in a security plan. Rather, we proposed that a company should implement a plan that is appropriate to its individual circumstances, considering the types and amounts of hazardous materials shipped or transported and the modes used for transportation.

Commenters generally support the proposed requirement. However, commenters are concerned about certain details of the proposal. A major concern for many commenters is the language used in the NPRM to describe the security plan and its purpose. In the words of one commenter, ''The written plan requirement is too strongly worded. [We are] deeply concerned with much of the language in the security plan component of the NPRM. The purpose of any planning, whether for security or safety, is to reduce and mitigate risks. However, the NPRM as worded mandates 'assurance' of 100% risk-free operations. This is not possible.'' (National Propane Gas Association) Other commenters express similar reservations. ''The security plan should 'address' various subjects, but no requirement of the regulations should require that the plan 'assure' that unauthorized or unlawful actions will not take place. The word 'assure' has a strong legal content, and would serve to impose undue strict liability on anyone who had the misfortune to experience a security incident, no matter how unavoidable that incident was.'' (Sulfur Dioxide Mutual Assistance Response Team) We agree that the term ''assure,'' as used in the NPRM to describe the purposes and goals of a security plan, was inappropriate. No plan, no matter how comprehensive and detailed, can provide absolute assurance that each shipment of hazardous materials to which it applies will be transported without incident. In this final rule, we are modifying subpart I, as suggested by commenters, to more properly

characterize a security plan in terms of addressing and reducing security risks presented by the transportation of certain hazardous materials in commerce.

Related to the liability concern, commenters ask how the proposed security plan requirement would be enforced. ''Any measurement of a security plan would be entirely subjective. * * * If our products were somehow involved in a terrorist act, does this mean our security plan failed? And if so, what enforcement action will be taken?'' (Airgas, Inc.) Other commenters ask what standard will be used to determine whether security plans comply with regulatory requirements.

Each security plan will differ because each security plan will be based on a company's assessment of the security risks associated with the materials it ships or transports. There is no ''one-size-fits-all'' security plan that will be appropriate for each company's individual circumstances; similarly, there is no ''one-size-fits-all'' enforcement standard that can be applied to individual companies. We will examine a company's security plans, including the vulnerability assessment on which the security plan is based, as necessary to ascertain that a company has a plan in place, that it includes the components specified in this final rule, and that its personnel have been trained concerning the plan's specific components.

The fact that a product is used in a terrorist, criminal, or destructive action does not automatically mean that the security plan failed or that Federal security requirements are inadequate. A security plan should represent a company's best, good-faith effort to address identified security risks. However, plans must be updated as new information and technology become available. Compliance with Federal regulatory standards may constitute an effective defense in private litigation. However, failure to comply with those standards can be argued to constitute negligence.

Several commenters suggest that the requirement for security plans should be applied more narrowly than proposed in the NPRM. For example, shipments of bulk packagings that contain residues of certain hazardous materials must be placarded and, thus, would be subject to the proposed security plan requirement. Similarly, shipments of certain corrosive or flammable materials in Packing Groups II or III, such as institutional cleaning products, must be placarded in some circumstances and, thus, would be subject to the proposed security plan requirement. Commenters suggest that ''the requirement for an offeror or transporter to develop and implement a security plan should more appropriately be predicated upon the types (in terms of hazard) and/or quantities of hazardous materials offered or transported by the person, rather than on whether that person is required to register. * * * [S]ecurity plans should only be required for offerors and transporters of hazardous materials that have the potential to pose a significant threat from a security perspective if those hazardous materials were to fall into the wrong hands.'' (Conference on Safe Transportation of Hazardous Articles, Inc.) We agree that a requirement for security plans should apply only to those materials that present significant security threats. The registration and select agent and toxins lists cover the materials that present the most significant security threats in transportation and provide a relatively straightforward way to distinguish materials that may present a significant security threat from materials that do not. Further, the requirements for security plans proposed in the NPRM and adopted in this final rule permit a shipper or carrier to develop a security plan that assesses the specific security risks of the materials to be transported and put into place measures that are commensurate with the assessed risks. If a shipper or carrier determines that the security risks of the materials it handles are relatively small, then its security plan may well be limited in scope and complexity.

One commenter suggests that materials such as propane do not present a security risk sufficient to require development of shipper and carrier security plans. ''Propane has an excellent safety record both at the storage site and in transit. Propane's narrow range of flammability, its tendency to disperse rapidly if released, and the robust, Federally-regulated systems used to contain the product all support the assertion that propane should not be considered a weapon of mass destruction.'' (National Propane Gas Association) We disagree. Propane is among the liquefied compressed gases most commonly transported throughout the nation. When liquid propane is released into the atmosphere, it quickly vaporizes into the gaseous form that is its normal state at atmospheric pressure. This happens very rapidly, and in the process, the propane combines readily with air to form fuel-air mixtures that are ignitable over a range of 2.2 to 9.5 percent propane by volume. If an ignition source is present in the vicinity of a highly flammable mixture, the vapor cloud ignites and burns very rapidly (characterized by some experts as ''explosively''). Based on these characteristics and the frequency with which propane is transported in this country, we believe that propane presents a sufficient security risk to warrant the imposition of security plan and security training requirements.

Another commenter requests an exception from the proposed security plan requirements for petroleum marketer transporters ''given the already heightened level of security practiced by this unique branch of hazardous materials transporters.'' (Ohio Petroleum Marketers Association) In support of this request, the commenter cites regulations such as State fire codes, workers compensation laws, and Federal transportation safety laws ''that reduce the potential for certain hazardous materials to be targets for terrorists, and that maintain a high level of security awareness for hazardous materials employees.'' Again, we disagree. The regulations cited by the commenter are focused on safety, not security. Products transported by petroleum marketers, such as fuel oil and motor fuel, can potentially be used as weapons of opportunity or can be combined with other materials to construct weapons of mass destruction. Indeed, trucks loaded with petroleum products have been used in terrorist attacks on at least two occasions in recent months overseas. In addition, on June 21, 2002, the Federal Bureau of Investigation disclosed that it had information that terrorists using fuel tanker trucks might try to attack fuel depots or Jewish schools or synagogues. The warning was based on interviews with captured al Qaeda fighters and other sources. Therefore, we reject the requested exceptions.

A number of commenters note that, as drafted, the NPRM suggests that the proposed security plan requirements apply to every shipment offered for transportation or transported in commerce by a person required to register by subpart G of part 107. For example, one commenter says, ''A corporation subject to the hazmat registration requirements may easily have more than one facility—some of which might perform operations that would benefit from a security plan, others of which might not. It would be patently unreasonable to require each facility operated by the same corporation subject to hazmat registration requirements * * * develop and implement a security plan regardless of whether the particular facility transports hazardous materials

subject to those requirements.'' (Utility Solid Waste Activities Group) We agree. Our intention in the NPRM was for those shipments that are listed as triggering the registration requirements in subpart G of part 107 to be subject to security plan requirements, not for every shipment transported by a registered entity or every facility operated by a registered entity. This final rule clarifies that persons who offer for transportation or transport any of the materials listed in subpart G of part 107 or a select agent or toxin regulated by CDC must develop and adhere to security plans applicable to the listed materials.

The NPRM proposed that a security plan address the security of shipments stored incidental to movement in transportation. Several commenters are concerned about the applicability of the security plan requirement to persons that do not offer or transport hazardous materials in commerce, but who may operate facilities at which hazardous materials are stored during transportation. One commenter notes that ''[i]n many situations, HAZMAT are delivered to or through facilities operated by entities that are not subject to the security plan requirements because they may not be legally required to register.'' (Dangerous Goods Advisory Council) We agree that the final rule should clarify responsibility for security plans applicable to hazardous materials stored incidental to movement in transportation. Generally, these hazardous materials will be stored at a shipper or carrier-owned or -operated facilities, and the shipper or carrier will be responsible for developing a security plan. In this final rule, the requirement for developing and adhering to a security plan applies to persons who offer for transportation or transport hazardous materials in commerce, including loading, unloading, or storage operations incidental to the movement of hazardous materials in commerce.

Another commenter proposes that we adopt a definition for ''storage incidental to movement'' to distinguish storage that is part of transportation, and therefore subject to security plan requirements, from storage that is not part of transportation. For purposes of this final rule, storage incidental to movement of a hazardous material in commerce is storage that takes place between the time that a hazardous material is offered for transportation to a carrier and the time it reaches its destination. This definition is consistent with long-standing administrative determinations and letters of interpretation concerning the applicability of the HMR to materials stored incidental to their movement in commerce. We note in this regard that this agency is currently engaged in a rulemaking to clarify the applicability of the HMR to specific functions and activities, including storage of hazardous materials during transportation (HM–223; RSPA–98–4952). The NPRM issued under HM–223 proposed to define ''storage incidental to movement'' to mean ''storage of a transport vehicle, freight container, or package containing a hazardous material between the time that a carrier takes physical possession of the hazardous material for the purpose of transporting it until the package containing the hazardous material is delivered to the destination indicated on a shipping document, package marking, or other medium, or, in the case of a private motor carrier, between the time that a motor vehicle driver takes physical possession of the hazardous material for the purpose of transporting it until the driver relinquishes possession of the package containing the hazardous material at its destination and is no longer responsible for performing functions subject to the HMR.'' We are currently in the process of evaluating comments to the HM–223 NPRM. If a final rule issued under docket HM–223 revises the definition of ''storage incidental to movement'' in a way that affects the applicability to such storage of the security plan requirements in this final rule, we will address such revision, including its implications for security plans and any transition time necessary to implement changes, in the HM–223 final rule.

Most commenters support ''the flexibility RSPA provides in [the] proposal to regulated entities in how they go about meeting [the security plan] requirement.'' (National Association of Chemical Distributors) These commenters agree that ''the regulated community needs the flexibility to select those elements [of a security plan] that are consistent with their methods of operation.'' (Independent Fuel Terminal Operators Association) Other commenters, however, are concerned that the elements suggested in the NPRM for possible inclusion in a security plan are ''extremely general. In fact, they are so general as to be either unenforceable, or worse, subject to widely varying interpretations by field inspectors and adjudicators. The security plans and codes that have been developed by industry and are being further refined at the current time are far more specific and useful in addressing the security issues facing the various hazardous materials moving in commerce. If it is RSPA's purpose simply to require security plans for transporters and offerors without specifying the nature or content of those plans, [we] have no objection. If on the other hand, RSPA intends to somehow oversee the substance of such plans, the proposed requirements are too vague to be enforced.'' (The Chlorine Institute) Similarly, other commenters do not agree with the NPRM approach to list non-mandatory items in the regulatory text for security plans, such as the specific elements listed in the NPRM for possible inclusion in a security plan to address en route shipment security issues. These commenters suggest that recommendations should not be made part of regulatory text because of enforcement and liability concerns. Additionally, commenters are concerned that establishing specific requirements for security plans could be counter-productive. One commenter cites as an example the proposal in the NPRM that a security plan must include a process to verify information provided by job applicants. ''While a natural temptation would be to specify exactly the kind of checks to be applied, doing so would merely lay out a road map for the potential terrorist seeking employment with a carrier. If a check of X, Y, and Z is required, the terrorist organization will select operatives who can pass a check of X, Y, and Z, but perhaps not A or B. The essence of security is unpredictability—concept in conflict with regulatory precision.'' (CSX Transportation)

We carefully considered the comments offered concerning the security plan requirements proposed in the NPRM. We continue to believe that, if it is to be effective, a regulation mandating development and implementation of a security plan must provide sufficient flexibility so that a shipper or carrier can adapt its requirements to individual circumstances. Thus, the requirement for a security plan adopted in this final rule sets forth general requirements for a security plan's components rather than a prescriptive list of specific items that must be included. In this final rule, the proposed security plan requirements are modified as follows:

*Applicability.* The security plan requirement applies to persons who offer for transportation or transport in commerce one or more of the hazardous materials listed in subpart G of 49 CFR part 107 or a select agent or toxin regulated by CDC. The security plan requirement also applies to persons who operate facilities at which one or more

of the hazardous materials listed in subpart G of 49 CFR part 107 or select agent or toxin regulated by CDC is stored incidental to the movement of the hazardous material(s) in commerce. As indicated above, for purposes of this final rule, ''storage incidental to movement'' is storage that takes place between the time that a hazardous material is offered for transportation to a carrier and the time it reaches its destination. The security plan requirement applies only to shipments of the specified hazardous materials and to facilities at which the specified hazardous materials are prepared for transportation or stored during transportation.

*Security plan components.* A security plan must address risks related to the transportation of hazardous materials in commerce. Thus, this final rule requires persons subject to the security plan requirement to perform an assessment of the transportation security risks associated with the materials they handle. As we stated in the preamble to the NPRM, we have developed a security template to illustrate how risk management methodology can be used to identify points in the transportation process where security procedures should be enhanced within the context of an overall risk management strategy. The security template is posted on our website at *http://hazmat.dot.gov/rmsef.htm.* Other risk assessment tools are equally valid, however. This final rule does not require persons subject to the security plan requirement to use a specific risk assessment tool to meet the risk assessment requirement.

Using risk assessment methodology, a company will select an appropriate level of detail for its security plan based on the assessed risks identified for such material or materials. Factors that may be considered are the type or types of materials transported, the quantity of material transported, the area from or to which the material is shipped, and the mode of transportation used.

A security plan must include a method or methods for confirming information provided by applicants for jobs that involve access to or handling of the hazardous materials covered by the plan. In response to commenters' concerns, we revised this aspect of the security plan to substitute the term ''confirm'' for the term ''verify.'' Commenters are concerned that the standard implied by the term ''verify'' may be impossible to meet. In addition, this final rule requires employers to confirm information provided by job applicants who are hired to perform jobs that involve access to or handling of the hazardous materials covered by the plan. Read literally, the NPRM language would have required employers to confirm information provided by all job applicants.

Also in response to commenters, we have added language to indicate those persons to whom the requirement applies. Some commenters suggest that we should specify that the requirement applies to hazmat employees, as defined in § 171.8 of the HMR. We do not believe that this is necessary, although an employer may decide to include all hazmat employees. The requirement in this final rule is limited to applicants for hazmat employee positions that involve access to or handling of the hazardous materials covered by the security plan. We do not believe it necessary to include persons whose sole responsibility is preparing shipping documentation, for example, nor do we believe it necessary to include persons who manufacture, maintain, or requalify packagings.

We do not expect companies to confirm all of the information that a job applicant may provide as part of the application process. However, employers should make an effort to check information related to an applicant's recent employment history, references, and citizenship status. In short, we expect companies to take reasonable and prudent measures to address personnel security issues. In response to commenters, in this final rule we added a requirement that efforts to confirm information provided by job applicants must be consistent with applicable Federal and State laws concerning employment practices and individual privacy.

A security plan must also include methods to address the possibility that unauthorized persons may attempt to gain access to hazardous materials or transport vehicles being prepared for transportation. Some commenters suggest that we include a definition of ''unauthorized persons'' in this final rule. The term ''unauthorized persons'' as used in this final rule includes persons who are not employed by the company or members of the general public, unless such persons are specifically authorized by the company to have access to hazardous materials or transport vehicles being prepared for transportation. Beyond these persons, however, each entity to whom the security plan requirement applies will need to define the universe of unauthorized persons to account for the nature of the facility and the type of activity that takes place there. An unauthorized person is any person who is not authorized by the shipper or carrier to have access to hazardous materials or transport conveyances being prepared for transportation.

The third element of a security plan is a method or methods to address en route security risks. As noted above, commenters express a number of concerns about this provision of the NPRM. Many commenters address the shared responsibility of shippers and carriers for reducing security risks related to the transportation of hazardous materials in commerce. In particular, some commenters suggest that ''[r]esponsibility for the security of a shipment in transit should in the final analysis rest with the transporter. The shipper does not ultimately determine the routes for movement of cargo or the locations for incidental stops or storage. This responsibility appropriately rests with the carrier.'' (Boeing Company) Other commenters agree that en route security should primarily be the responsibility of the carrier. ''[T]o a great extent, shippers must rely on the carriers to generate en route security plans. This may mean that in some cases there would be two separate plans instead of a joint shipper and carrier plan. * * * [We] believe that shippers and carriers should have the flexibility to determine the best way to address en route security.'' (American Chemistry Council) Other commenters suggest that the proposal places ''too much emphasis on the shipper and recipient, and effectively absolves the transporter of responsibility for security. The carrier has control of the HM for the majority of any shipment, and should also bear the responsibility for ensuring an adequate safety plan and implementation of same.'' (CF Industries)

We agree that a hazardous materials transporter's security plan will address en route security issues in some detail. However, we do not agree that shippers need not address this aspect of transportation security. As one commenter suggests, ''[C]arrier 'security plans' must involve considerable input from the shipper community. It is the shipper who has best access to information relative to the hazardous properties of the commodity. It is the shipper who controls: Carrier selection and order entry; loading; time and method of dispatch; and, destination.'' (National Tank Truck Carriers) At the same time, we recognize that ''the carrier has the best information relative to the route taken and the security along that route. This includes driving time, route deviations, and rest stop selection.'' (American Chemistry Council) We expect shippers to work with carriers to address en route security risks of the materials covered

by their security plans. In some cases, a shipper and carrier may have a joint plan; in others, a shipper and carrier may have two separate security plans. This final rule provides shippers and carriers with the flexibility necessary to determine the best methods for addressing en route security issues.

A number of commenters object to the NPRM language that a security plan should include a system for verifying that a carrier has an on-going transportation security program. ''In effect, this aspect of the proposal would require that customers of carriers take an active role in ensuring that carriers are in compliance with the security plan requirements proposed by RSPA. In effect, RSPA is deputizing offerors of hazmat to police their carrier's compliance efforts.'' (International Sanitary Supply Association) We are not requiring shippers to compel compliance by carriers. At a minimum, however, a shipper should satisfy itself that the carrier that will be transporting its material has a security plan in place that adequately addresses the assessed security risks of the material to be transported, including risks related to storage of the material during transportation.

*Relationship to other requirements.* The NPRM included a provision permitting security plans that conform to regulations of other Federal or international agencies to be used to satisfy the requirement proposed for the HMR. All commenters support this provision. Several suggest that we specify that plans that conform to requirements of the Department of Defense or the Nuclear Regulatory Commission are acceptable. We do not think it is necessary to specifically list in the regulation Federal or international agencies that have now or may in the future impose security plan requirements on persons who handle hazardous materials. A security plan that conforms to regulations issued by any other Federal agency is acceptable, so long as it includes the requirements for security plans in this final rule. Other commenters request that we include plans developed by industry associations, such as the American Chemistry Council or the Association of American Railroads. Certainly, we expect that many companies will develop security plans using guidance and recommendations developed by the industry. In fact, we encourage companies to take advantage of existing guidance, model security plans, and the like when developing security plans tailored to their own operations. This includes industry-developed protocols or guidelines and recommendations issued by other Federal or international agencies. This provision is modified in this final rule to clarify that regulations, protocols, guidelines, or standards developed by other Federal agencies, international organizations, or industry are acceptable, provided such regulations or guidelines address the specific security vulnerabilities of the company.

We note in this regard that, while a security plan developed in conformance with regulations issued by another Federal agency may suffice to meet the requirements of this final rule, the reverse is not necessarily true. For example, air cargo security requirements promulgated by TSA are more stringent than the security requirements in this final rule. Similarly, requirements promulgated by NRC to address the transportation security of radioactive materials may be more stringent than the requirements in this final rule. Shippers and carriers should be aware that they may be subject to additional, more stringent security requirements promulgated by other Federal agencies, depending on the materials they transport and the mode of transportation.

*Availability to the public.* Several commenters express concern about the possibility that security plans may become publicly available. ''It is critical that carrier and shipper plans remain confidential; not subject to public disclosure and Freedom of Information Act requests.'' (CSX Transportation) Commenters are particularly concerned about plans that may be obtained by enforcement personnel during a compliance inspection.

Generally, RSPA will not collect or retain security plans. With regard to security plans, our enforcement focus during the compliance inspection is to ensure that companies have developed a security plan. Inspectors will review the existing plan on site and generally will not take copies with them or require companies to submit security plans.

In the rare instance that RSPA enforcement personnel identify a need to collect a copy of a security plan, or if a company voluntarily submits a copy of its security plan, we will analyze all applicable laws and Freedom of Information Act exemptions to determine whether the information or portions of information in the security plan can be withheld from release. Prior to submission of a security plan to DOT in these unusual instances, companies should follow the procedures described in 49 CFR 105.30 for requesting confidentiality. Under those procedures, a company should identify and mark the information it believes is confidential and explain why. We will then determine whether the information may be released or protected under the law.

*Timing of implementation.* Commenters are concerned that the final rule provide sufficient time for development and implementation of security plans. The NPRM did not specify a transition period. We agree that a transition period is necessary. Therefore, in this final rule, we provide persons subject to the security plan requirement 6 months from the effective date of the final rule to develop and implement security plans.

*G. Training*

The HMR currently require hazmat employees to be trained so they are: (1) Familiar with the general provisions of the HMR and can recognize and identify hazardous materials; (2) knowledgeable about specific HMR requirements applicable to functions performed; and (3) knowledgeable about emergency response information, self-protection measures, and accident prevention methods. A hazmat employee is one who directly affects hazardous materials transportation safety (§ 171.8). Hazmat employers must ensure that their hazmat employees are trained. For new employees, training must be completed within 90 days after employment or a change in job function. All hazmat employees must receive recurrent training every three years.

The safety training provided by hazmat employers may include the physical security of hazardous materials and ways to prevent vandalism and theft. However, such training may not be adequate to meet current threats. Because many hazardous materials transported in commerce may potentially be used as weapons of mass destruction or weapons of convenience, it is critical to the assurance of public safety that training for persons who offer and transport hazardous materials in commerce include a security component. Therefore, in the May 2, 2002 NPRM, we proposed to add a provision to § 172.704 to require the training of each hazmat employee to include a security component. We proposed that hazmat employees of persons required to have a security plan must be trained in the plan's specifics. In addition, we proposed that all hazmat employees must receive training that provides an awareness of the security issues associated with hazardous materials transportation and possible methods to enhance transportation security. As proposed in the NPRM, all hazmat employees would be required to

be trained within three months of issuance of a final rule.

Commenters generally support the proposal to require hazmat employee training to include a security component. However, commenters suggest that three months is not sufficient to implement and conduct training programs, particularly for hazmat employees of companies subject to the requirement for security plans. ARequiring security training for each hazmat employee within three months of the final rule effective date will be very difficult to implement. Once the requirements are published by DOT, companies will then be able to finalize development of their security training by combining components of the final rule with other requirement[s] of the hazmat employer's circumstances. Subsequently, training must be approved, disseminated within the company, trainers educated on the module's requirements, and hazmat employees scheduled for training.'' (Air Products) Some commenters suggest that security training should be required on a schedule consistent with current 3-year training cycles for hazmat employees. Others request implementation periods ranging from 6 months to one year.

We do not agree with commenters that development and implementation of transportation security awareness training will require a lengthy period for development and implementation. As we stated in the NPRM, to assist hazmat employers to meet any new security training requirements, we are developing a Hazardous Materials Transportation Security Awareness Training Module directed at law enforcement, industry, and hazmat personnel. Imminently, this training module will be available for distribution and use, free of charge. The module takes one hour to complete. This training module or similar training programs that may be developed by commercial vendors or hazmat employers will be sufficient to meet the security awareness training requirement in this final rule. However, we are sympathetic to the industry's concerns about the time required to complete training for all affected hazmat employees. Therefore, this final rule permits hazmat employers to provide security awareness training on the same 3-year schedule as other types of required hazmat training; thus, security awareness training must be provided an at employee's next scheduled retraining at or within the 3-year training cycle. However, we strongly encourage hazmat employers to provide security awareness training to hazmat employees on an accelerated schedule wherever possible.

We agree with commenters that 3 months from the effective date of a final rule does not provide sufficient time for training of hazmat employees by hazmat employers who are subject to the new requirement for security plans. However, once a security plan is implemented, we believe that employee training about its provisions should be completed no later than 3 months after the plan's implementation. Therefore, in this final rule, we are providing up to 9 months (6 months to develop and implement a security plan plus 3 months to train employees) for completion of training for these hazmat employees. As with the new requirement for security awareness training, it is not necessary to test or retain records concerning this new security plan training requirement until an employee's next scheduled retraining at or within the 3-year training cycle.

## III. Regulatory Analyses and Notices

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is a significant regulatory action under Executive Order 12866 and the regulatory policies and procedures of the Department of Transportation (44 FR 11034) because of substantial public interest. The Office of Management and Budget reviewed this final rule.

Compliance costs resulting from this final rule are associated with the new requirements for certain shippers and carriers to implement security plans and for hazmat employee training to include a security component. An analysis of the costs and benefits of this final rule is included in the rulemaking docket. The cost-benefit analysis also addresses comments we received on the estimates included in the May 2, 2002 NPRM.

*Costs.* We estimate that companies subject to the security plan requirement in this final rule will incur first-year compliance costs totaling about $54.3 million to develop and implement security plans and subsequent-year costs totaling about $11 million/year for annual updates to the plans. Each security plan will be unique; thus, it is difficult to develop cost estimates for the measures that companies may implement to enhance hazardous materials transportation security. Ultimately, we expect each company to make reasonable decisions on measures it can take to improve security. Because companies will set security priorities and factor costs into their decisions, we believe the measures they choose will be cost-effective. Accordingly, we have not attempted separately to cost out or justify these actions as part of this rulemaking.

For the security training mandated in this final rule, we estimate that companies will incur first-year compliance costs totaling about $34 million, with subsequent-year costs totaling about $18 million/year for recurrent training.

*Benefits.* Safety benefits of regulatory changes frequently can be estimated with some degree of precision. Incident and accident history often provide a basis for estimating fatality, injury, property damage, environmental damage, and similar costs to society that can be avoided by the implementation of new requirements. Models can even estimate the costs to society of high consequence, low probability accidents. Benefit estimates can then be balanced against the estimated costs of new requirements to determine whether the changes are justified.

Estimating the security benefits of new requirements is much more challenging. Accident causation probabilities, based on previous accident histories and analysis, can be estimated in a way that the chances of a criminal or terrorist act cannot. Indeed, the threat of attack is virtually impossible to assess from a quantitative standpoint. That hazardous materials in transportation are a possible target of terrorism or sabotage is undeniable; the probability that hazardous materials in transportation will be targeted is, at best, a guess. Similarly, the projected outcome of a terrorist attack cannot be precisely estimated. Given a decision to attack the system, one must assume that choices will be made to maximize consequences and damage.

It is possible to envision scenarios where hazardous materials in transportation could be used to inflict hundreds or even thousands of fatalities. Direct costs and those attributable to transportation system disruption that would surely result could easily total in the billions of dollars. We are operating under the premise that, in today's environment, it is necessary to take reasonable measures to reduce the likelihood that such events will be successful. The presence of such measures should, in fact, help deter potential attacks. The provisions we are adopting have been crafted with this in mind.

If the measures adopted by this rule have the potential of reducing the likelihood of success of such an attack, we believe they are worthwhile. Moreover, the American public has an expectation that reasonable measures will be taken to help ensure the security

of chemicals and substances present in our society so that they are not used for nefarious purposes. We believe many, if not most, companies are taking or have already taken steps to develop systematic security plans and security awareness training. These requirements will help ensure a consistent approach in the area while permitting flexibilities that are important in keeping costs at reasonable levels.

In the end, when security measures are evaluated, an element of judgment is required to determine whether the costs of the measures are justified by the benefits that will accrue. We believe that the relatively small costs imposed on individual companies by the new security requirements in this final rule are more than offset by the potential benefits if there is a finite chance that these measures might avert a successful attack. The new requirements are not onerous. They are prudent, common-sense security measures that are in line with public expectations about the need to take action to protect hazardous materials shipments from terrorist acts.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. A complete analysis of the small business impacts of this final rule is available in the rulemaking docket. I hereby certify that, while the requirements in this final rule apply to a substantial number of small entities, there will not be a significant economic impact on those small entities.

*C. Executive Order 13132*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts State, local, and Indian tribe requirements but does not impose any regulation with 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. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

In the NPRM, we invited comments on whether, and to what extent, State or local governments or Indian tribes should be permitted to impose similar additional requirements to those proposed in the NPRM. Commenters who address this issue unanimously agree that State, local, or tribal governments should not be permitted to impose hazardous materials transportation security requirements that differ from or are in addition to those adopted in this final rule. We agree. Therefore, in the absence of a waiver of preemption by the Secretary under 49 U.S.C. 5125(e) or unless it is authorized by another Federal law, a hazardous materials transportation security requirement of a State, political subdivision of a State, or Indian tribe is explicitly preempted if: (1) Complying with a requirement of the State, political subdivision or Indian tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or (2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

*D. Executive Order 13175*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

*E. Unfunded Mandates Reform Act of 1995*

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in annual costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector. This rule is the least burdensome alternative to achieve the objective of the rule.

*F. Paperwork Reduction Act*

We submitted the information collection and recordkeeping requirements contained in this final rule to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995, section 1320.8(d). Title 5, Code of Federal Regulations requires us to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. Under the Paperwork Reduction Act, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number.

The May 2, 2002, NPRM included the following estimate for the information and recordkeeping burden resulting from the development and maintenance of security plans:

Hazardous Materials Security Plans

OMB No. 2137–xxxx

First Year Burden:
*Total Annual Number of Respondents:* 44,000.
*Total Annual Responses:* 44,000.
*Total Annual Burden Hours:* 880,000.
*Total Annual Burden Cost:* $26,400,000.

Subsequent Year Burden:
*Total Annual Number of Respondents:* 44,200.
*Total Annual Responses:* 44,200.
*Total Annual Burden Hours:* 48,000.
*Total Annual Burden Cost:* $1,440,000.

In the NPRM, we estimated that most companies would require about 20 hours to develop and implement a security plan conforming to the new regulatory requirements. This estimate was based on our understanding, confirmed by commenters to the NPRM, that many industry groups have developed guidance and model security plans for use by their members. Further, to assist persons to perform the risk management analysis required by this final rule, we designed a security template for the Risk Management Self-Evaluation Framework (RMSEF), developed to assist regulators, shippers, carriers, and emergency response personnel to examine their operations and consider how they assess and manage risk. The security template illustrates how risk management methodology can be used to identify points in the transportation process where security procedures should be enhanced within the context of an overall risk management strategy. Because of the widespread availability of tools to assist persons to develop and implement security plans, we concluded that the cost to an individual company to comply with the security plan requirement would average about $600 per affected entity.

Commenters who address security plan costs disagree with our conclusion. For example, one commenter estimates that, ''[f]or the 6000 (15% of the total registrants) large HAZMAT registrants, [we] estimate that it will take a minimum of 200 hours to develop a comprehensive security plan (estimated cost for the 6000 registrants: $100 per hour x 200 hours = $120 million).'' (Dangerous Goods Advisory Council) Other commenters offered similar cost estimates.

As commenters themselves point out, a number of industry associations have developed guidelines and model security plans that can be readily adapted to meet a company=s individual circumstances, thereby reducing individual company costs. Indeed, on June 5, 2002, the American Chemistry Council (ACC) made enhanced security activities mandatory for its members, to help assure the public that all member facilities are involved in making their neighbors and America more secure. The ACC Board approved a new Security Code under Responsible Care®, the industry's initiative for improving performance, that consists of increased specific commitments to further safeguard chemical operations from potential terrorist attacks. The Security Code includes measures to enhance chemical transportation security. Over 200 chemical companies are ACC members; in addition, nearly 40 industry associations are Responsible Care® Partner Associations.

Further, the Association of American Railroads has developed a ''comprehensive Terrorism Risk Analysis and Security Management Plan. The industry formed a security task force * * * Outside consultants with expertise in intelligence and counter-terrorism were retained to provide advice on best practices. * * * The task force undertook a comprehensive risk analysis which identified critical assets, vulnerabilities, and threats, and assessed the overall risk to people, national security, and the nation's economy. The task force then proceeded to identify over fifty countermeasures. The Terrorism Risk Analysis and Security Management Plan * * * is now in effect. * * *'' The Association of American Railroads includes 14 Class I railroads and 10 non-Class I railroads.

Many companies will not need to perform sophisticated analyses or develop complicated security plans in order to comply with the new requirement. Companies that only occasionally transport one of the hazardous materials to which the security plan requirement applies may be able to utilize one of the off-the-shelf security manuals now being marketed by several vendors. These manuals include information and guidelines that assist companies to identify and address areas of concern, including concerns related to personnel safety and security, site security, en route security, and training. One such security manual sells for $165, with regular updates available under an annual subscription costing about $80.

Because there is such a wealth of information and assistance available to companies subject to the security plan requirements of this final rule, we do not agree with commenters who suggest that our cost estimate for developing hazardous materials transportation security plans in the May 2 NPRM was ''greatly under-estimated.'' Actual per-company costs will vary, depending on the nature of the materials transported and the size and complexity of a company's operations. We estimate that the time necessary to develop a security plan will range between our initial estimate of 20 hours per company and the industry estimate of 200 hours per company. For purposes of this analysis, we believe that, on average, a large company, using information available from RSPA, industry associations, or vendors, will require about 50 hours to develop a security plan that meets the requirements of this final rule. A smaller company, on average, will require about 25 hours to develop a security plan that meets the requirements of this final rule. Using Bureau of Labor Statistics information on employee compensation (March 2001), we estimate that the cost per hour of developing a security plan is $45.00 (one professional plus one administrative support staff). Thus, for the large companies subject to the security plan requirements of this final rule, we estimate that the costs to develop a security plan will total $14,512,500 (6,450 large entities × 50 hours/entity × $45/hour) or $2,250 per entity. For the small companies subject to the security plan requirements of this final rule, we estimate that the costs to develop a security plan will total $41,118,750 (36,550 small entities × 25 hours/entity × $45/hour) or $1,125 per entity.

This final rule requires companies to update security plans as necessary to account for changing circumstances. We expect that most companies will update their security plans at least once a year. We estimate the hours required to update a security plan will average 10 hours for a large company and 5 hours for a small entity. Thus, for large companies, we estimate the costs to update a security plan will total $2,902,500/year (6,450 large entities × 10 hours/entity × $45/hour), or $450 per entity. For small companies, we estimate the costs to update a security plan will total $8,223,650/year (36,550 small entities × 5 hours/entity × $45/hour), or $225 per entity.

Our revised estimate of the information collection and recordkeeping burden related to the security plan requirements in this final rule is shown below. This new information collection, ''Hazardous Materials Security Plans'', will be assigned an OMB control number after review and approval by OMB. We estimate that the new total information collection and recordkeeping burden resulting from the development and maintenance of security plans under this rule is as follows.

Hazardous Materials Security Plans

OMB No. 2137–xxxx

First Year Annual Burden:
- *Total Annual Number of Respondents:* 42,000.
- *Total Annual Responses:* 42,000.
- *Total Annual Burden Hours:* 1,207,500.
- *Total Annual Burden Cost:* $54,337,500.

Subsequent Year Burden:
- *Total Annual Number of Respondents:* 42,200.
- *Total Annual Responses:* 42,200.
- *Total Annual Burden Hours:* 247,250.
- *Total Annual Burden Cost:* $11,126,250.

Requests for a copy of this information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone (202) 366–8553. We will publish a notice advising interested parties of the OMB control number for this information collection when assigned by OMB.

*G. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

*H. Environmental Assessment*

There are no significant environmental impacts associated with this final rule. An environmental assessment is available in the docket for this rulemaking.

**List of Subjects in 49 CFR Part 172**

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we are amending title 49, chapter I, subchapter C, as follows:

## PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 172.704, paragraph (a) introductory text is revised, paragraphs (a)(4) and (a)(5) are added, and paragraph (b) is revised to read as follows:

### § 172.704 Training requirements.

(a) Hazmat employee training must include the following:

* * * * *

(4) *Security awareness training*. No later than the date of the first scheduled recurrent training after March 25, 2003, and in no case later than March 24, 2006, each hazmat employee must receive training that provides an awareness of security risks associated with hazardous materials transportation and methods designed to enhance transportation security. This training must also include a component covering how to recognize and respond to possible security threats. After March 25, 2003, new hazmat employees must receive the security awareness training required by this paragraph within 90 days after employment.

(5) *In-depth security training*. By December 22, 2003, each hazmat employee of a person required to have a security plan in accordance with subpart I of this part must be trained concerning the security plan and its implementation. Security training must include company security objectives, specific security procedures, employee responsibilities, actions to take in the event of a security breach, and the organizational security structure.

(b) *OSHA, EPA, and other training*. Training conducted by employers to comply with the hazard communication programs required by the Occupational Safety and Health Administration of the Department of Labor (29 CFR 1910.120 or 1910.1200) or the Environmental Protection Agency (40 CFR 311.1), or training conducted by employers to comply with security training programs required by other Federal or international agencies, may be used to satisfy the training requirements in paragraph (a) of this section to the extent that such training addresses the training components specified in paragraph (a) of this section.

* * * * *

3. Subpart I is added to read as follows:

## Subpart I—Security Plans

Sec.
172.800 Purpose and applicability.
172.802 Components of a security plan.
172.804 Relationship to other Federal requirements.

### 172.800 Purpose and applicability.

(a) *Purpose*. This subpart prescribes requirements for development and implementation of plans to address security risks related to the transportation of hazardous materials in commerce.

(b) *Applicability*. By September 25, 2003, each person who offers for transportation in commerce or transports in commerce one or more of the following hazardous materials must develop and adhere to a security plan for hazardous materials that conforms to the requirements of this subpart:

(1) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this subchapter, in a motor vehicle, rail car, or freight container;

(2) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

(3) More than one L (1.06 qt) per package of a material poisonous by inhalation, as defined in § 171.8 of this subchapter, that meets the criteria for Hazard Zone A, as specified in §§ 173.116(a) or 173.133(a) of this subchapter;

(4) A shipment of a quantity of hazardous materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;

(5) A shipment in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class under the provisions of subpart F of this part;

(6) A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR part 73; or

(7) A quantity of hazardous material that requires placarding under the provisions of subpart F of this part.

### § 172.802 Components of a security plan.

(a) The security plan must include an assessment of possible transportation security risks for shipments of the hazardous materials listed in § 172.800 and appropriate measures to address the assessed risks. Specific measures put into place by the plan may vary commensurate with the level of threat at a particular time. At a minimum, a security plan must include the following elements:

(1) *Personnel security*. Measures to confirm information provided by job applicants hired for positions that involve access to and handling of the hazardous materials covered by the security plan. Such confirmation system must be consistent with applicable Federal and State laws and requirements concerning employment practices and individual privacy.

(2) *Unauthorized access*. Measures to address the assessed risk that unauthorized persons may gain access to the hazardous materials covered by the security plan or transport conveyances being prepared for transportation of the hazardous materials covered by the security plan.

(3) *En route security*. Measures to address the assessed security risks of shipments of hazardous materials covered by the security plan en route from origin to destination, including shipments stored incidental to movement.

(b) The security plan must be in writing and must be retained for as long as it remains in effect. Copies of the security plan, or portions thereof, must be available to the employees who are responsible for implementing it, consistent with personnel security clearance or background investigation restrictions and a demonstrated need to know. The security plan must be revised and updated as necessary to reflect changing circumstances. When the security plan is updated or revised, all copies of the plan must be maintained as of the date of the most recent revision.

### § 172.804 Relationship to other Federal requirements.

To avoid unnecessary duplication of security requirements, security plans that conform to regulations, standards, protocols, or guidelines issued by other Federal agencies, international organizations, or industry organizations may be used to satisfy the requirements in this subpart, provided such security plans address the requirements specified in this subpart.

Issued in Washington DC on March 19, 2003, under authority delegated in 49 CFR part 1.

**Ellen G. Engleman,**

*Administrator, Research and Special Programs Administration.*

[FR Doc. 03–7080 Filed 3–24–03; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Tuesday,
March 25, 2003

# Part V

# The President

## Executive Order 13291—Further Adjustment of Certain Rates of Pay

Federal Register
Vol. 68, No. 57
Tuesday, March 25, 2003

# Presidential Documents

**Title 3—**

## The President

**Executive Order 13291 of March 21, 2003**

## Further Adjustment of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered that Executive Order 13282 of December 31, 2002, is amended as follows:

**Section 1.** Section 3(c) of Executive Order 13282 is amended to read as follows:

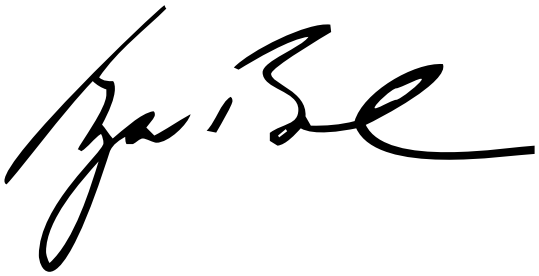
''(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a), section 140 of Public Law 97–92, and Public Law 108–6) at Schedule 7.''.

**Sec. 2.** Section 5(a) of Executive Order 13282 is amended to read as follows:

''(a) Pursuant to section 5304 of title 5, United States Code, and in accordance with section 637 of Division J of Public Law 108–7, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.''.

**Sec. 3.** Executive Order 13282 is amended by striking Schedules 7 and 9 attached thereto and inserting Schedules 7 and 9 attached hereto and made a part hereof.

**Sec. 4.** The amendments made by this order are effective on the first day of the first applicable pay period beginning on or after January 1, 2003.



THE WHITE HOUSE,
*March 21, 2003.*

Billing code 3195–01–P

**SCHEDULE 7--JUDICIAL SALARIES**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

| | |
|---|---|
| Chief Justice of the United States | $198,600 |
| Associate Justices of the Supreme Court | 190,100 |
| Circuit Judges | 164,000 |
| District Judges | 154,700 |
| Judges of the Court of International Trade | 154,700 |

**SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

| Locality Pay Area[1] | Rate |
|---|---|
| Atlanta, GA | 10.85% |
| Boston-Worcester-Lawrence, MA-NH-ME-CT-RI | 15.00% |
| Chicago-Gary-Kenosha, IL-IN-WI | 16.15% |
| Cincinnati-Hamilton, OH-KY-IN | 13.44% |
| Cleveland-Akron, OH | 11.50% |
| Columbus, OH | 11.78% |
| Dallas-Fort Worth, TX | 12.10% |
| Dayton-Springfield, OH | 10.67% |
| Denver-Boulder-Greeley, CO | 14.77% |
| Detroit-Ann Arbor-Flint, MI | 16.27% |
| Hartford, CT | 15.56% |
| Houston-Galveston-Brazoria, TX | 20.53% |
| Huntsville, AL | 10.06% |
| Indianapolis, IN | 9.83% |
| Kansas City, MO-KS | 10.26% |
| Los Angeles-Riverside-Orange County, CA | 17.71% |
| Miami-Fort Lauderdale, FL | 13.81% |
| Milwaukee-Racine, WI | 11.20% |
| Minneapolis-St. Paul, MN-WI | 12.84% |
| New York-Northern New Jersey-Long Island, NY-NJ-CT-PA | 16.83% |
| Orlando, FL | 9.65% |
| Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD | 13.43% |
| Pittsburgh, PA | 10.52% |
| Portland-Salem, OR-WA | 12.97% |
| Richmond-Petersburg, VA | 10.75% |
| Sacramento-Yolo, CA | 13.29% |
| St. Louis, MO-IL | 9.99% |
| San Diego, CA | 14.07% |
| San Francisco-Oakland-San Jose, CA | 21.08% |
| Seattle-Tacoma-Bremerton, WA | 13.11% |
| Washington-Baltimore, DC-MD-VA-WV | 12.74% |
| Rest of U.S. | 9.62% |

[1] Locality Pay Areas are defined in 5 CFR 531.603.

[FR Doc. 03–7313

Filed 3–24–03; 8:58 am]

Billing code 6325–01–C

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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**H.R. 395/P.L. 108–10**

Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

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