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Presidential Documents

Title 3—

The President

Proclamation 7664 of April 15, 2003

National Fair Housing Month, 2003

By the President of the United States of America

A Proclamation

The Fair Housing Act was signed on April 11, 1968, just one week after the assassination of Dr. Martin Luther King, Jr. This landmark bill, Title VIII of the Civil Rights Act of 1968, resulted from the hard work and leadership of Dr. King and others in the civil rights movement and was an important step toward confronting discrimination against minorities in housing. As we celebrate the 35th anniversary of this historic legislation, we reaffirm our commitment to ensuring that all Americans have equal access to housing.

The Fair Housing Act of 1968 has helped open doors of opportunity for countless families. Since its passage, America has made significant progress in achieving equal housing access for all individuals.

Despite this progress, more work remains in our struggle to achieve equality and racial justice. Prejudice and discriminatory practices in housing still exist in America. A recent lending study showed that minorities continue to receive less information, less assistance, and less favorable terms and conditions than non-minorities while applying for home loans. These practices are wrong. As a Nation, and as individuals, we must be vigilant in responding to discrimination wherever we find it and ensuring that minority families have access to housing. With my minority homeownership initiative and its partnership with the private sector, I have set a goal to increase the number of minority homeowners by 5.5 million by 2010.

All Americans should know their housing rights, and the Department of Housing and Urban Development (HUD) is working to increase public awareness of fair housing laws, including those combating discrimination in mortgage lending. The 2004 budget request for HUD includes $50 million for fair housing—a 9 percent increase over 2003 funding—with a substantial portion specifically allocated for increased education and outreach efforts. The Department is also collaborating with the Federal Deposit Insurance Corporation on a financial education program in minority neighborhoods. In addition, the HUD, Education, and the Treasury Departments are advancing initiatives to educate families about homeownership through counseling programs and financial literacy efforts.

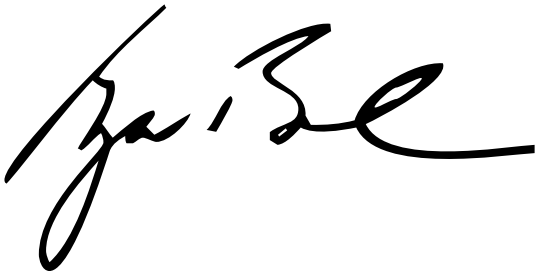
We are also vigilantly enforcing fair housing laws, showing no tolerance for those who discriminate. The Office of Fair Housing and Equal Opportunity at HUD is working with private industry and fair housing and community advocates to promote voluntary compliance and to ensure that consumers are treated in a lawful, respectful manner. When warranted, the Department of Justice takes legal action to protect our citizens from discrimination based on race, color, religion, sex, or national origin.

Finally, we are working to increase the supply of accessible housing for citizens with disabilities. HUD continues to aggressively enforce the law on behalf of people with disabilities, and the Department is working cooperatively with builders, architects, and others to provide technical assistance to help construct more handicapped-accessible housing.

Fair Housing Month provides an opportunity to place special emphasis on our goal to increase homeownership throughout our country. Together, we can advance toward a future where all our citizens have access to a key element of the American Dream—homeownership.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2003 as National Fair Housing Month. I call upon the people of the United States to learn more about their rights and responsibilities under the Fair Housing Act and the roles they can individually and collectively play to combat housing discrimination.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



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Rules and Regulations

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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.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

[Docket Number FGIS 2003–003]

RIN 0580–AA76

Exceptions to Geographic Areas for Official Agencies Under the USGSA

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Final rule.

SUMMARY: This rule revises regulations issued under the United States Grain Standards Act (USGSA) to establish criteria to allow more than one designated official agency to inspect or weigh grain within a single geographic area. The rule will enhance the orderly marketing of grain by providing segments of the grain industry with more cost-effective and responsive official grain inspection and weighing services without undermining the integrity of the official system.

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Neil Porter, Director, Compliance Division at (202) 720–8262.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Executive Order 12988, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The U.S. Grain Standards Act (USGSA) (7 U.S.C. 71 *et seq.*) provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this rule would not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of Grain Inspection, Packers and Stockyards Administration (GIPSA) has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA conducted a 6-year voluntary pilot program. The pilot program permitted more than one official agency to operate in the same geographic area. There are 58 official agencies (15 States and 43 private agencies) designated under the USGSA. Thirty-six agencies (7 States and 29 private agencies) or 61 percent participated in the pilot program. All 43 private agencies are classified as business services, and all are ''small business entities'' under the guidelines of the Small Business Administration (SBA). The SBA does not classify States as small or large business entities. Volumes were down for state agencies. Of the 43 private agencies, 29 or 67 percent participated in the pilot program. Fourteen of the 29 saw an increase in service requests and 15 saw a decrease in service requests due to the greater flexibility provided by the pilot program. All increases and decreases in service requests represented inspections of railcars or barges. A 5-year average of official railcar and barge inspections is about 850,000 railcars per year, and about 28,000 barges per year. Less than 2 percent of the total number of railcars and less than 3 percent of the total number of barges were inspected under the pilot program by designated official agencies.

The customers (grain elevators) of the official agencies that requested service under the pilot program represented a mix of both large and small entities as defined for the grain industry by the SBA. GIPSA expects that this would remain the case. Approximately 70 percent of the 128 grain elevators that participated in the pilot program were small entities under the SBA guidelines, and accounted for 82 percent of the service volume for railcars. The 128 elevators that participated in the pilot program represent less than two percent of the estimated 9,695 off-farm storage facilities in the United States that could receive official inspection services.

Fifty-six percent of the volume of railcar inspection services during the pilot program was performed at grain elevators that had not used official services for more than a year. GIPSA believes that the pilot program has enhanced the orderly marketing of grain by providing grain elevators with improved services without undermining the integrity of the USGSA and the official system. At the same time, there has been no significant economic impact on small entity official agencies or grain elevators.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in part 800 have been previously approved by the Office of Management and Budget under control number 0580–0013. There would be no additional reporting or recordkeeping requirements imposed by this action. The request to GIPSA for approval can be done by telephone. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this rule.

Background

In 1976, the USGSA specified exclusive geographic boundaries for each designated entity performing official inspections. In later years, some grain firms reported delays in getting service due to the distance from the inspection laboratories serving them. Others had difficulty getting service during harvest or other peak demand periods. In April 1993, the General Accounting Office released a study, entitled ''Grain Inspection Industry Views on the Decline in Official Inspections and Inspection Costs,'' which questioned maintaining exclusivity of boundaries.

On November 1, 1995, GIPSA, under the authority of the 1993 Amendments to the USGSA, initiated a pilot program to study the effect of permitting more than one designated agency to inspect or weigh grain in a single geographic area. GIPSA concluded, based on information

gathered from the pilot program, that less restrictive geographic service area requirements on designated official agencies would improve the quality of service provided to the American grain industry and facilitate the marketing of grain without undermining the integrity of the USGSA and the official system. Legislative authority was requested to permit more than one designated official agency to provide official services within a single geographic area.

Congress amended the USGSA in 2000 to give the Department discretion, under certain circumstances, to allow more than one designated official agency to provide official inspection services within a single geographic area. GIPSA is implementing this authority by revising the regulations under the USGSA. Under certain circumstances, more than one designated official agency can provide official inspection services within a single geographic area. This provides segments of the grain industry with more cost-effective and responsive official grain inspection and weighing services.

Comment Review

GIPSA received 3 comments during the 60-day comment period. One was from a private laboratory wanting an opportunity to do business as an official grain inspection agency. GIPSA infers from the private laboratory's comment that they are interested in becoming an official designated agency for the purpose of conducting domestic inspections pursuant to the USGSA. The commenter may apply for such designation, and must meet the statutory criteria under section 7f(1)(a) of the USGSA. The commenter may obtain further information by accessing GIPSA's Web site at: *http://www.usda.gov/gipsa*, or by calling GIPSA at (202) 720–8525.

One comment was from a professional association of official grain inspection and weighing agencies, and one was from a grain trade association, stating membership of 1,000 grain, feed, processing, and grain-related companies, approximately 70 percent of which are small entities. All three supported GIPSA's proposal, however, the trade association supports the proposal with the following comment: ''We oppose including the phrase 'due to reasons other than seasonal shipping fluctuations' in proposed § 800.117(b)(2), Nonuse of Service, because it robs industry of its ability to effectively use the *strict 3-month non-use of service* under the Agency's Open Season pilot program * * * to encourage the assigned designated official agency to provide more cost effective and responsive service or possibly lose business to a competing official agency.''

GIPSA is clarifying the new section 800.117(b)(2) to more accurately describe its intent. GIPSA has revised the criteria for ''Nonuse of Service'' to read, ''* * * due to reasons other than seasonal ice making waterways unnavigable.'' The inclusion of the phrase ''due to reasons other than seasonal ice making waterways unnavigable'' allows GIPSA to accomplish the intent of the nonuse exception program, but reduces the possibility that some official agencies will be at an advantage over others because of climatic conditions. GIPSA continually works to provide for cost-effective and responsive official inspection and weighing service, while implementing the USGSA requirements to provide for uniform official inspection and weighing, and carrying out assigned regulatory and service responsibilities.

Final Action

GIPSA revises the following: 7 CFR 800.81, 800.99, 800.116, 800.117, 800.118, 800.185, and 800.196 to implement changes in the USGSA. The changes allow sampling for official sample-lots, and weighing of sacked grain outside the geographical boundaries assigned to the designated official agency. Program criteria for nonuse of service, timely service, and barge probing is provided. Requests for original services allow qualified applicants to use another agency to provide service. Official personnel may operate outside of the area of responsibility assigned to them. The action allows exceptions to the designated areas of responsibility. The sections regarding certification are combined for a more logical sequence.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

■ For the reasons set out in the preamble, 7 CFR part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

■ 1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

■ 2. Section 800.81 is amended by revising paragraphs (a)(1) and (d) and the information collection parenthetical to read as follows:

§ 800.81 Sample requirements; general.

(a) *Samples for official sample-lot inspection service*—(1) *Original official sample-lot inspection service.* For original sample-lot inspection purposes, an official sample shall be obtained by official personnel; representative of the grain in the lot; and protected from manipulation, substitution, and improper or careless handling.

* * * * *

(d) *Restriction on sampling.* Official personnel shall not perform an original inspection or a reinspection service on an official sample or a warehouseman's sample unless the grain from which the sample was obtained was located within the area of responsibility assigned to the agency or field office at the time of sampling, except as provided for in § 800.117, or on a case-by-case basis as determined by the Administrator.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0013)

■ 3. Section 800.99 is amended by revising paragraph (d) to read as follows:

§ 800.99 Checkweighing sacked grain.

* * * * *

(d) *Restriction on weighing.* No agency shall weigh any lot of sacked grain unless at the time of obtaining the official weight sample the grain from which the sample was obtained was located within the area of responsibility assigned to the agency, except as otherwise provided for in § 800.117, or on a case-by-case basis as determined by the Administrator.

* * * * *

■ 4. Section 800.116 is revised to read as follows:

§ 800.116 How to request original services.

(a) *General.* Except as otherwise provided for in § 800.117, requests for original services shall be filed with an agency or field office authorized to operate in the area in which the original service is to be performed. All requests shall include the information specified in § 800.46. Verbal requests shall be confirmed in writing when requested by official personnel, as specified in § 800.46. Copies of request forms may be obtained from the agency or field office upon request. If the information specified by § 800.46 is not available at the time the request is filed, official personnel may, at their discretion, withhold service pending receipt of the required information. An official certificate shall not be issued unless the information as required by § 800.46 has been submitted, or official personnel determine that sufficient information

has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(b) *Request requirements.* Except as provided for in § 800.117, requests for original services, other than submitted sample inspections, must be made to the agency or field office responsible for the area in which the service will be provided. Requests for submitted sample inspections may be made with any agency, or any field office that provides original inspection service. Requests for inspection or Class X weighing of grain during loading, unloading, or handling must be received in advance of loading so official personnel can be present. All requests will be considered filed when official personnel receive the request. A record shall be maintained for all requests. All requests for service that is to be performed outside normal business hours must be received by 2 p.m. the preceding day.

(Approved by Office of Management and Budget under control number 0580–0013)

■ 5. Section 800.117 is revised to read as follows:

§ 800.117 Who shall perform original services.

(a) *General.* Original services shall be performed by the agency or field office assigned the area in which the service will be provided, except as provided in paragraph (b) of this section.

(b) *Exceptions for official agencies to provide service*—(1) *Timely service.* If the assigned official agency cannot provide service within 6 hours of a request, the service may be provided by another official agency upon approval from the Service.

(2) *Nonuse of service.* If the assigned official agency has not provided official services to an applicant for 90 consecutive days, due to reasons other than seasonal ice making waterways unnavigable, service may be provided by another official agency upon approval from the Service.

(3) *Barge probe service.* Any official agency may provide probe sampling and inspection service for barge-lots of grain with no restrictions due to geographical locations.

(c) *Interim service at other than export port locations.* If the assigned official agency is not available on a regular basis to provide original services, and no official agency within a reasonable proximity is willing to provide such services on an interim basis, the services shall be provided by authorized employees of the Secretary, or other persons licensed by the Secretary, until the services can be provided on a regular basis by an official agency, as provided in § 800.196.

■ 6. Section 800.118 is revised to read as follows:

§ 800.118 Certification.

Official certificates shall be issued according to § 800.160. Upon request, a combination inspection and Class X weighing certificate may be issued when both services are performed in a reasonably continuous operation at the same location by the same agency or field office. An official certificate shall not be issued unless the information as required by § 800.46 has been submitted, or official personnel determine that sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(Approved by Office of Management and Budget under Control Number 0580–0013)

■ 7. Section 800.185 is amended by revising paragraph (d) and the informational parenthetical to read as follows:

§ 800.185 Duties of official personnel and warehouse samplers.

* * * * *

(d) *Scope of operations.* Official personnel and warehouse samplers shall operate only within the scope of their license or authorization and except as otherwise provided in § 800.117, operate only within the area of responsibility assigned to the official agency, field office, or contractor which employs them. Official personnel and warehouse samplers may perform official inspection or weighing services in a different area of responsibility with the specific consent of the Service.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0013)

■ 8. Section 800.196 is amended by revising paragraph (f)(1) and the information collection parenthetical to read as follows:

§ 800.196 Designations.

* * * * *

(f) *Area of responsibility*—(1) *General.* Each agency shall be assigned an area of responsibility by the Service. Each area shall be identified by geographical boundaries and, in the case of a State or local government, shall not exceed the jurisdictional boundaries of the State or the local government, unless otherwise approved by the Service. The area of responsibility may not include any export elevators at export port locations or any portion of an area of responsibility assigned to another agency that is performing the same functions, except as otherwise provided in § 800.117. A designated agency may perform official services at locations outside its assigned area of responsibility only after obtaining approval from the Service, or in accordance with provisions set forth in § 800.117.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0013).

Dated: April 15, 2003.

Donna Reifschneider,

Administrator.

[FR Doc. 03–9630 Filed 4–17–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV00–927–3]

Winter Pears Grown in Oregon and Washington; Order Amending Marketing Order No. 927

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing order for winter pears grown in Oregon and Washington (order). Three amendments were proposed by the Winter Pear Control Committee (Committee), which is responsible for local administration of the order. Of these three, only one proposal was favored by winter pear growers in a mail referendum, held July 17 through August 2, 2002. The single amendment to the order will change provisions related to alternate Committee members serving for absent members at Committee meetings. This amendment will improve the operation and functioning of the winter pear marketing order program by ensuring industry representation at Committee meetings. The two amendments that failed to receive grower support in the referendum include authorizing the Committee to recommend maturity regulations, and authorizing the Committee to recommend container or marking requirements. These amendments will not be implemented.

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Regional Manager, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326–2724 or Fax (503) 326–7440; or Melissa Schmaedick, Agricultural Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, Post Office Box 1035, Moab, Utah 84532; telephone: (435) 259–7988, or Fax: (435) 259–4945.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, Stop 0237, room 2525-S, Washington, DC 20250–0237; telephone (202) 720–2491; Fax (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on November 2, 2000, and published in the November 8, 2000, issue of the **Federal Register** (65 FR 66935); Recommended Decision and Opportunity to File Written Exceptions issued on March 27, 2002, and published in the April 3, 2002, issue of the **Federal Register** (67 FR 15747); Secretary's Decision and Referendum Order issued June 4, 2002, and published in the **Federal Register** on June 10, 2002 (67 FR 39634).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated on the record of a public hearing held in Portland, Oregon, on November 29, 2000. Notice of this hearing was published in the **Federal Register** on November 8, 2000. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 927, regulating the handling of winter pears grown in Oregon and Washington. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). The Notice of Hearing contained three amendment proposals submitted by the Committee, and one proposed by the Agricultural Marketing Service (AMS).

The Committee's proposals included: authorizing the Committee to recommend maturity regulations; authorizing the Committee to recommend container and marking requirements; and changing provisions related to alternate Committee members serving for absent members at Committee meetings.

The Fruit and Vegetable Programs of AMS proposed to allow such changes as may be necessary to the order, so that all of the order's provisions conform with the effectuated amendment. No conforming changes have been deemed necessary.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on March 27, 2002, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by May 3, 2002. No exceptions were filed.

A Secretary's Decision and Referendum Order was issued on June 4, 2002, directing that a referendum be conducted during the period July 17 through August 2, 2002, among growers of winter pears to determine whether they favored the proposed amendments to the order. Ballots representing 522 winter pear producers, or about 34 percent of the producers eligible to vote, were cast. The voters voting in the referendum favored only one of the three amendments proposed by the Committee. This amendment, which will authorize additional alternates to serve when a Committee member and that member's alternates are unable to attend a Committee meeting, received favorable votes representing 87.36 percent of the number of growers and 81.65 percent of the volume of production represented in the referendum. The additional alternate will be required to be from the same group of growers or handlers as the member or alternates they serve in place of.

The other two amendments, which would have authorized container and marking requirements and minimum maturity regulation, failed to obtain the requisite number of votes, in number or in volume, needed to pass. The proposal to authorize container and marking requirements received 65.33 percent of the number of voters, and 51.39 percent of the volume of production, in favor of the amendment. The proposal to authorize maturity regulation received 53.07 percent of the number of voters, and 45.90 percent of the volume, in favor of the amendment. To become effective, the amendments had to be approved by at least two-thirds of those producers voting or by voters representing at least two-thirds of the volume of winter pears represented by voters voting in the referendum.

The amended marketing agreement was subsequently mailed to all winter pear handlers in the production area for their approval. The marketing agreement was not approved by handlers representing at least 50 percent of the volume of winter pears handled by all handlers during the representative period of July 1, 2001, through June 30, 2002.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and amendments thereto are unique in that they are normally brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act are compatible with respect to small entities.

According to the Small Business Administration (13 CFR 121.201), small agricultural producers are those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers, are those having annual receipts of less than $5,000,000.

Of the 1,800 winter pear growers, 80 to 85 percent are estimated to have sales equal to or less than $750,000. There are 90 handlers operating in the production area. The majority of these handlers fit the SBA definition of a small handler. Thus, a majority of the winter pear producers and handlers are considered small under the SBA definition. This action will apply primarily to small entities.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses.

This final rule amends § 927.28 of the order to authorize additional alternates to serve for a Committee member in the event that both that member and that member's alternates are unable to attend a Committee meeting. This action is designed to ensure grower and handler representation at all Committee meetings.

The amendment provides that, in the event that a Committee member and both his or her alternates cannot attend a meeting, the absent Committee member can designate a temporary alternate, provided that the temporary alternate represents the same group (grower or handler) as the absent member. Thus, in the event that all alternates for Committee members in the same group representing a given district are unavailable, selection of a temporary alternate would rely on the availability of other Committee members' alternates from the remaining districts.

This method of selecting a temporary alternate will ensure representation of all growers and handlers (both large and small) at Committee meetings while having little or no increase in Committee administrative costs. Moreover, testimony demonstrated that the authority to temporarily assign alternates would improve representation of the small producers and handlers.

The collection of information under the marketing order will not be affected by this amendment to the marketing order. Current information collection requirements for part 927 are approved by OMB under OMB number 0581–0089.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. This amendment is designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings to discuss the proposals were widely publicized throughout the Oregon and Washington winter pear production area. All interested persons were invited to attend the meetings and the hearing, and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums, and all entities, both large and small, were able to express views on these issues.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Civil Justice Reform

The amendment contained in this rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The amendment will not preempt any State or local laws, regulations, or policies, unless it presents an irreconcilable conflict with the amendment.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Order Amending the Order Regulating the Handling of Winter Pears Grown in Washington and Oregon

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record*.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq*.), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 927 (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby further amended, regulates the handling of winter pears grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of winter pears grown in the production area; and

(5) All handling of winter pears grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Determinations*. It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping winter pears covered by the order as hereby amended) who, during the period July 1, 2001, through June 30, 2002, handled 50 percent or more of the volume of such winter pears covered by said order, as hereby amended, have not signed an amended marketing agreement;

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period July 1, 2001, through June 30, 2002 (which has been deemed to be a representative period), have been engaged within the production area in the production of such winter pears, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum; and

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing

the interests of producers of winter pears in the production area.

Order Relative to Handling of Winter Pears Grown in Oregon and Washington

It is therefore ordered, That on and after the effective date hereof, all handling of winter pears grown in Oregon and Washington shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions to change order language relating to alternate Committee members serving for absent members at Committee meetings contained in USDA's Decision issued by the Administrator on June 4, 2002, and published in the **Federal Register** on June 10, 2002, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 927.28 to read as follows:

§ 927.28 Alternates for members of the Control Committee.

The first alternate for a member shall act in the place and stead of the member for whom he or she is an alternate during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his or her first alternate shall act as a member until a successor for the member is selected and has qualified. The second alternate for a member shall serve in the place and stead of the member for whom he or she is an alternate whenever both the member and his or her first alternate are unable to serve. In the event that both a member of the Control Committee and that member's alternates are unable to attend a Control Committee meeting, the member may designate any other alternate member from the same group (handler or grower) to serve in that member's place and stead.

* * * * *

Dated: April 14, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–9629 Filed 4–17–03; 8:45 am]

BILLING CODE 3410–02–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Metal-Cored Candlewicks Containing Lead and Candles With Such Wicks

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is today declaring that metal-cored candlewicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances and is banning such wicks and candles with such wicks.[1] The Commission is issuing this final rule under authority of the Federal Hazardous Substances Act (FHSA).

DATES: This final rule becomes effective on October 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kristina Hatlelid, Ph.D., M.P.H., Project Manager, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7254.

SUPPLEMENTARY INFORMATION:

A. Background

On February 24, 2000, the U.S. Consumer Product Safety Commission (CPSC or Commission) received a request from Public Citizen that the Commission ban candles with lead-containing wicks and wicks sold for candle-making that contain lead. On February 29, 2000, CPSC received a similar request from the National Apartment Association and the National Multi Housing Council. These requests were docketed collectively under the FHSA (Petition No. HP 00–3) on March 17, 2000.

After analysis of the available data on lead-cored candlewicks and the information provided by the petitioners, the CPSC staff transmitted a briefing package to the Commission recommending that it proceed with a rulemaking that could result in a ban of lead-cored candlewicks and candles with such wicks. The staff recommended that a lead-cored wick be defined as a wick containing a metal core with greater than 0.06 percent lead by weight in the metal, since laboratory test data indicate that burning candles with metal-cored wicks with lead concentrations of 0.06 percent or less by weight does not result in detectable emissions of lead into the air. On February 20, 2001, the Commission voted to grant the petition and commence rulemaking by issuing an advance notice of proposed rulemaking (ANPR) incorporating this criterion. 66 FR 10863. The ANPR was followed in April of 2002 by a notice of proposed rulemaking (NPR) that included requirements for certification, record-keeping, labeling, and tracking of metal-cored candlewicks and candles that comply with the ban. 67 FR 20062.

B. The Product [2]

Lead-cored wicks are candlewicks with a metal wire in the center made of lead or lead alloy. The metal core is used to provide structural rigidity to the wick, *i.e.*, to keep the wick straight during candle production, and to provide an upright wick during burning.

C. The Market

1. Trade Associations

The major trade association that represents candle and wick manufacturers and suppliers is the National Candle Association (NCA). NCA members include about 74 candle manufacturers, 10 of which are foreign. The NCA states that its members produce about 90 percent of the candles made in the U.S. Another U.S. based organization, comprised of craftspersons, is the International Guild of Candle Artisans, with 800 members from around the world.

2. Candle Information

Of 483 firms identified by CPSC staff as U.S. candle manufacturers, all but three firms had fewer than 500 employees and 293 (or 60 percent) had fewer than five employees.

In 2000, the latest year for which factory shipment data are available, U.S. domestic candle shipments totaled approximately $1.5 billion. Imports

[1] The Commissioners voted 3–0 to issue these final rules.

[2] Information presented in this preamble is derived from briefing memoranda to the Commission from Kristina M. Hatlelid, Ph.D., M.P.H., toxicologist, Directorate for Health Sciences, to the Commission, ''Petition HP 00–3 to Ban Lead-Cored Candlewicks,'' December 12, 2000; ''Proposal to Ban Lead-Cored Candlewicks,'' March 18, 2002; and ''Briefing Package for Ban on Candles with Lead-containing Wicks for Candle-making that Contain Lead—Final Rule,'' March 27, 2003. These and other materials for this rulemaking are available on the CPSC world wide Web site at *www.cpsc.gov* and from the CPSC office of the Secretary, Room 502, 4330 East West Highway, Bethesda, Maryland, 20814, (301) 504–7923.

amounted to $504 million in 2000 with candles from the Far East accounting for almost half of the imports. U.S. exports of candles amounted to about $60.5 million in 2001. The apparent U.S. consumption of candles in 2000 (domestic shipments plus imports, minus exports) was about $2.0 billion.

Retail prices of candles range from about 10 cents for a small tealight candle up to $75.00 for large columnar candles.

There are limited data available concerning use of candles in homes. According to the NCA, candles are used in 70 percent of U.S. households. They are burned one to three times a week by the majority of candle consumers. Half of the consumers burn one or two candles at a time.

3. Candlewick Information

There are three general types of candlewicks. Flat braided wicks, used in taper candles, make up about 50 percent of U.S. wick production. Square wicks, representing less than 10 percent of U.S. production, are used in production of beeswax candles and candles that develop small wax pools when burning. Cored wicks, which account for about 40 percent of wicks used in candles, are rigid and have a central core made of cotton, paper, hemp, metal, or polypropylene, surrounded by wicking material made of paper or fiber. The cores provide rigidity to wicks in candles that produce deep pools of molten wax, and are frequently used in votives, pillars, tealights, and other container candles.

CPSC staff identified three domestic producers of candlewicks. The leading producer accounts for the majority of wicks used by the U.S. candle industry. In addition, there may be several small specialty producers of wicks.

Candlewick manufacturers sell their wicks to wholesalers (candle material suppliers) or large candle manufacturers. Some wholesale wick suppliers repackage wicks supplied by large producers. The CPSC staff has identified 55 wholesale suppliers of candle making materials. Small candle producers usually purchase wick material from wholesale firms.

Small quantities of candlewicks may be purchased by consumers at craft stores. They may be purchased in large quantities from wholesale firms or direct from manufacturers. Wicks are available on reels or precut to desired lengths. Prices vary depending upon how the wick is supplied and the quantities ordered. For example, based on one manufacturer's list prices, pre-waxed wicks on reels were 12 cents per yard and pre-waxed, pre-cut, two-inch wicks were 37 cents per yard. For this manufacturer, price did not depend on wick type.

No specific information is available for domestic shipments or sales of candlewicks. However, based on information provided by the leading domestic candlewick manufacturer in its comments on the NPR, the CPSC staff estimates that total domestic sales of candlewicks could be about four to five million dollars annually. Data on international trade in wicks do not distinguish candlewicks from other types of wicks (*e.g.*, wicks for stoves, lighters, and lamps). Still, imports of all types of wicks, including candlewicks, were about $4.1 million in 2001.

Prior to the granting of the petition, candlewicks with some levels of detectable lead were found in the marketplace. In a non-statistical survey of candles for sale in the Washington, DC area in 1999, the petitioners found that about 30 percent of candles for sale had metal-cored wicks, and about 10 percent of these (or three percent of all candles sampled) had detectable levels (*i.e.*, at least trace levels) of lead in the wick.

According to the NCA, use of lead cored wicks among U.S. manufacturers is negligible. Practically all metal-cored wicks currently produced in the U.S. are made of zinc. According to the NCA, zinc-cored wicks account for about 15 to 20 percent of U.S. production. Zinc-cored wicks have trace amounts of lead, about 0.01 percent, substantially less than the lead limit in the standard finalized today.

D. The Risk of Illness

As a lead-cored wick candle burns, some of the lead may vaporize and be released into the air. This airborne lead may be inhaled. Some of this lead may deposit onto floors, furniture, and other surfaces in the room where children may be exposed to it. One cannot tell by looking at the wick core if it is made of lead, and there is no simple way for a consumer to determine its lead content. The presence of lead in a wick can be determined only by laboratory analysis.

Similarly, one cannot tell if lead is being released from a burning candle by observing smoke or soot; nor can one tell that lead is not being released by the lack of visible emissions. Determination of lead in room air or on surfaces must be done by professionals.

The toxic effects of lead and the risk to consumers, especially children, from exposure to lead emitted from lead-cored wick candles, including neurological damage, delayed mental and physical development, attention and learning deficiencies, and hearing problems, were detailed in the CPSC staff briefing packages on Petition No. HP 00–3. CPSC staff concluded that, under reasonable assumptions, exposure of children to indoor air lead levels from candles emitting 430 micrograms of lead per hour or more could result in elevated blood levels (greater than 10 micrograms of lead per deciliter of blood). Laboratory investigations by CPSC staff and others indicate that lead-cored wick candles can emit more than 3,000 μg of lead per hour during candle burning. Thus, the Commission finds that, under certain expected use conditions, the lead emitted from burning candles with lead-cored wicks presents a risk to consumers of substantial illness from exposure through inhalation of airborne lead. Children may also be exposed to lead that deposits onto surfaces in the room.

E. International Activities

Several countries have acted on this issue. Officials in Canada issued an advisory in January 2001, warning consumers that some candles sold in Canada contained lead-cored wicks, and offering advice on making informed purchasing decisions.[3] Officials in Australia and New Zealand instituted provisional bans on candles with wicks containing any amount of lead as early as 1999.[4] Australia recently announced a permanent ban on sales of candles with wicks containing more than 0.06 percent lead.[5]

Denmark issued a comprehensive order in December 2000 banning a number of products containing lead.[6] Chafing dish candles and other candles are specifically included in the ban. The order defines a lead-containing product as one in which lead represents more than 100 mg/kg (0.01 percent) of the homogeneous components.

F. Statutory Requirements

This proceeding is conducted under provisions of the FHSA. 15 U.S.C. 1261–1278. It involves two actions. First, pursuant to section 3(a) of the FHSA, the Commission is declaring that metal-cored candlewicks containing more than 0.06 percent lead by weight of the metal

[3] Health Canada Advisory 2001–02, January 2001.

[4] Commonwealth of Australia Consumer Protection Notice No. 11 of 1999 under the Trade Practices Act of 1974, September 1999; New Zealand Ministry of Consumer Affairs Unsafe Goods Notice under the Fair Trading Act 1986, June 2000.

[5] Press Release No. 057, Senator Ian Campbell, Parliamentary Secretary to the Treasury, Commonwealth of Australia, November 1, 2002.

[6] Statutory Order No. 1012 of November 13, 2000, on Prohibition of Import and Marketing of Products Containing Lead, Ministry of Environment and Energy, Danish Environmental Protection Agency.

and candles with such wicks are hazardous substances. 16 CFR 1500.12(a)(2). Second, pursuant to section 2(q)(1)(B) of the FHSA, the Commission is banning such wicks and candles with such wicks. 16 CFR 1500.17(a)(13).

A proceeding to declare a substance to be a ''hazardous substance'' under section 3(a) of the FHSA is governed by, *inter alia,* sections 701(e), (f), and (g) of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 371(e)–(g). *See* 15 U.S.C. 1262(a)(2).

The Commission is declaring that metal-cored candlewicks containing more than 0.06 percent lead by weight of the metal and candles with such wicks are ''hazardous substances'' within the meaning of section 2(f)(1)(A) of the FHSA because they are toxic, and ''may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use. * * *'' 15 U.S.C. 1261(f)(1)(A). The basis for this declaration is stated in section D. of this preamble, *The Risk of Illness.*

Under section 2(q)(1)(B) of the FHSA, the Commission may classify as a ''banned hazardous substance'' any hazardous substance intended for household use which, notwithstanding the precautionary labeling required by the FHSA, presents such a hazard that keeping the substance out of interstate commerce is the only adequate means to protect the public health and safety. 15 U.S.C. 1261(q)(1)(B). A proceeding to classify a substance as a banned hazardous substance under section 2(q)(1)(B) of the FHSA is governed by the requirements set forth in section 3(f) of the FHSA, and also by sections 701(e), (f), and (g) of the Federal Food, Drug, and Cosmetic Act (FDCA) (21 U.S.C. 371(e)). *See* 15 U.S.C. 1261(q)(2)and 1262(f).

The CPSC Human Factors staff analysis on the issue of precautionary labeling of individual candles concludes that labeling is not an acceptable strategy for protecting vulnerable populations from lead poisoning that may be caused by burning candles with lead-cored wicks.[7]

That analysis shows that since lead is emitted in unpredictable amounts from a candle with a metal-cored wick containing more than 0.06 percent lead in the metal when the candle is used as intended, the only preventative measures consumers could take to protect themselves against the hazard would be to not burn candles with such wicks. No label or subsequent action by the consumer would prevent the release of lead into the air if the candle were used as intended. The Commission therefore finds that, notwithstanding the precautionary labeling required by the FHSA, metal-cored candlewicks containing more than 0.06 percent lead in the metal and candles with such wicks present a hazard such that keeping them out of interstate commerce is the only adequate means to protect the public health and safety.

In addition to today's final rule banning these wicks and candles, the FHSA requires that the Commission publish a final regulatory analysis that includes: (1) A description of the potential costs and benefits of the rule; (2) a description of alternatives considered by the Commission (including a description of their potential costs and benefits and an explanation of why they were not chosen); and (3) a summary of significant issues raised by comments on the preliminary regulatory analysis published with these proposed rules. 15 U.S.C. 1262(i)(1). The Commission must also find that: (1) Any relevant voluntary standard is unlikely to adequately reduce the risk of injury or substantial compliance with the voluntary standard is unlikely; (2) the expected benefits of the regulation bear a reasonable relationship to expected costs; and (3) the regulation imposes the least burdensome requirement that would adequately reduce the risk of injury. 15 U.S.C. 1262(i)(2).

Procedures established by section 701(e) of the FDCA govern this Commission action to finalize the hazardous substance declaration and the banning rule. 15 U.S.C. 1262(a)(2) and 1261(q)(2). These procedures provide that once the Commission issues a final rule, persons who would be adversely affected by the rule have a period of 30 days in which to file objections stating reasonable grounds therefor, and to request a public hearing on those objections. 21 U.S.C. 371(e). Should valid objections be filed, a hearing to receive evidence concerning the objections would be held and the presiding officer would issue an order after the hearing, based upon substantial evidence. 21 U.S.C. 371(e); 16 CFR part 1502.

G. Response to Comments on the NPR

Six comments were received in response to the NPR. All six comments were in favor of a ban on lead-cored wicks. One commenter expressed interest in allowing the use of lead-cored candlewicks in certain circumstances.

One wick manufacturer (Atkins and Pearce) and two industry groups (Consumer Specialty Products Association, National Candle Association) provided comments. One commenter represented a non-profit information and advocacy group in Australia (Global Lead Advice and Support Service). Two commenters were individual consumers or interested parties.

1. Federal Regulation

Comments: All six commenters support the concept of regulating the use of lead in metal-cored candlewicks, although there was disagreement about the scope of the proposed regulation, and the proposed requirements for testing, certifying, and tracking metal-cored wicks.

Response: The Commission acknowledges the interest among consumers, industry, and advocacy groups in the elimination of candlewicks as a source of lead exposure. Responses to specific questions and comments about the proposed rule are set forth below.

2. Proposed Record-Keeping Requirements

Comments: The rule as proposed included requirements that shipping cartons of metal-cored candlewicks and shipping cartons of candles with such wicks be labeled as complying with the ban and with a lot number or other designation, and that wick and candle manufacturers, importers, and distributors maintain records documenting compliance with the ban for each lot. Representatives from industry expressed concern about the costs and labor that would be involved in the tracking of metal-cored wicks used in specific candles, and the maintenance of records.

These commenters provided some information about the candle-making process to illustrate potential difficulties with the proposed requirements. For example, the commenters described machines that rapidly produce many candles at once, simultaneously drawing candlewick from several different spools. Consequently, a batch of finished candles could contain wicks from different lots or sources. Further, these candles with different wicks would be indistinguishable and would be packaged together at the end of production. Thus, a single shipping carton could contain identical candles with different lots of metal-cored candlewicks. The commenters believe it would be labor intensive and costly to change the current method of production so that individual lots of

[7] *See* footnote 2 for sources for the CPSC staff analyses related to this rulemaking.

wicks could be separated and tracked. While not providing alternative estimates of costs, the commenters indicated that the staff may have underestimated the costs of the labeling and record-keeping requirements.

Response: On the basis of comments received and the CPSC staff's further analysis of the complex manufacturing processes described by the commenters and the limited benefits expected, the final rule issued today does not require record-keeping and tracking.

Comment: One commenter, a U.S. wick manufacturer, suggested that tracking could be done in ways other than labeling shipping cartons with a lot number or other identifier. For example, if the wicks in specific lots, made with specific lots of metal-core material (*e.g.*, zinc wire), could be visually distinguished from each other, manufacturers could track candlewick lots without changing current manufacturing processes. One way to distinguish wick lots would be to incorporate unique colors and patterns into the wick braid. Thus, inspecting the wicks in candles from a specified manufacturer would provide visual information about the wick lot. Multiple wick lots could be used at the same time in candle production, and multiple wick lots could end up in the same shipping carton, without losing the ability to obtain records for specific candles or track specific lots of metal-cored wicks. However, additional information provided by this commenter indicated that the use of color-coded tracer threads in the candlewick could result in increased costs associated with testing the performance of the new candlewicks before they could be used in candle production.

Response: The final rule issued today does not require the record-keeping and tracking proposed in the NPR.

3. Effective Date

Comment: One commenter stated that non-complying products should not benefit from an extended sell-through period.

Response: The Commission has no reason to believe that manufacturers, importers, or retailers have, or will, warehouse or stockpile candles made prior to the effective date that would not conform to the rule. Similarly, the Commission has no information that suggests that manufacturers, importers, or retailers will stockpile non-complying candlewicks for the purposes of producing candles between issuance of the final rule and the effective date. Moreover, non-complying candlewick inventory would not be usable after the effective date. The 180-day effective date provides time for manufacturers, distributors, and importers to make any necessary changes to bring their products and shipping containers into compliance with the regulation.

4. Lead-Cored Candlewicks Are Superior for Some Uses

Comment: A commenter stated that candles with lead-cored wicks performed better than candles with other kinds of wicks in a specific application (camping lanterns), and suggested that an exemption be made to allow specific uses of lead-cored candlewicks in candles.

Response: Additional information provided by this commenter indicates that the candles in question do not actually contain lead-cored wicks.

5. All Metals Should Be Banned for Use in Candlewicks

Comment: One commenter, representing an information and advocacy group in Australia, suggested that all metal-cored wicks should be banned for use in candles to avoid any confusion about whether the metal contains unacceptable levels of lead.

Response: As discussed in the CPSC staff briefing memoranda, laboratory test data show that burning candles with metal-cored wicks with lead concentrations of 0.06 percent or less by weight does not result in detectable emissions of lead into the air. Therefore, there is no basis for declaring all metal-cored candlewicks and candles with such wicks to be hazardous substances.

H. Alternatives to the Ban

1. No Action

If the Commission took no action, lead-cored candlewicks could continue to be sold in the U.S. In the mid-1970's the domestic candle industry stopped using lead in wicks, but lead-cored wicks reappeared on the domestic market some time thereafter. While the domestic industry states that it has now voluntarily eliminated lead in wicks, imports may continue to be a source of lead in the absence of a mandatory standard. Under a no action scenario, CPSC enforcement staff would be limited to taking action against lead-containing wicks under the FHSA on a case-by-case basis.

2. Voluntary Standards

In 1974, the Candle Manufacturers Association industry group submitted a statement informing the Commission of an agreement among candle manufacturers to convert to substitutes for lead-cored wicks in candles by the end of the third quarter 1974. They also agreed not to import candles with lead-cored wicks. Further, the major domestic wick manufacturer at that time agreed to discontinue the production of lead-cored wicks.

Despite this agreement, some wick manufacturers resumed producing lead-cored wicks and some candle manufacturers resumed producing and importing candles with lead-cored wicks after 1974.

In May 2000, a task group for candlewicks was formed under the ASTM F15.45 Candle Products Subcommittee to develop a consensus standard to address the lead content of candlewicks. The task group stopped their standards development process in February 2001 in favor of supporting the CPSC mandatory rulemaking process.

During the public comment period on the ANPR, Voices of Safety International (VOSI) proffered a voluntary standard for lead in candlewicks. CPSC technical staff reviewed the standard and noted a number of difficulties. Although the standard stated that a maximum of 0.01 percent lead is required to protect consumer health, no technical or health basis for this level was provided. The CPSC staff maintains that the limit of 0.06 percent lead by weight in the metal is appropriate and supported by the laboratory analyses performed by CPSC staff and others.

The CPSC staff further states that the analytical methodology in the submitted standard is not capable of reliably determining either the presence or concentration of lead in metal-cored candlewicks. The CPSC staff concludes that the tensile strength of a metal alloy would not definitively identify zinc cored wicks with less than the maximum allowable lead content in the metal, but could falsely detect alloys not containing lead, causing them to fail the test and be needlessly prohibited from wick use. The staff states that the metal's lead content, not its physical attributes, is the important characteristic in protecting consumers' health.

The VOSI standard specifies different standards for domestic and imported products. A discriminatory approach to imports with no basis in fact would in all likelihood be a violation of the North American Free Trade Agreement (NAFTA), if not other U.S. treaty obligations.

The Commission believes that membership in standards organizations, such as ASTM, serves, in part, to transmit applicable standards to member firms. VOSI offered no information that its members include candle or wick manufacturers. Nor has it provided any evidence that there would be substantial compliance with the voluntary standard.

Based on the foregoing analysis, the Commission finds that the VOSI standard is technically unsound, and thus would not result in the elimination or adequate reduction of the risk, and that substantial compliance with it is unlikely.

3. Precautionary Labeling

As discussed above in Section F. of this preamble, *Statutory Requirements*, the CPSC Human Factors staff analysis on this issue demonstrates that precautionary labeling of individual candles is not an acceptable strategy for protecting vulnerable populations from lead poisoning that may be caused by burning candles with lead-cored wicks.

I. Regulatory Analysis

1. FHSA Requirement

The Commission is issuing a rule declaring a ban on metal-cored wicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks. Section 3(i) of the FHSA requires that the Commission prepare a final regulatory analysis for this action. 15 U.S.C. 1262(i). The following discussion addresses this requirement.

2. Introduction

The Commission is amending the FHSA regulations to declare that metal-cored wicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances and to ban such wicks and candles. In February 2001, the Commission voted to issue an ANPR that could lead to such a declaration and ban. 66 FR 10863. In April 2002, the Commission issued proposed rules that would declare such wicks and candles with such wicks to be hazardous substances and would ban them. 67 FR 20062.

3. Required Content of the Regulatory Analysis

To issue the ban rule under the FHSA, the Commission must also publish a final regulatory analysis containing a discussion of various factors. These factors include a description of the potential benefits and potential costs of the rule, including any benefits and costs that cannot be quantified in monetary terms, and an identification of those most likely to receive the benefits and bear the costs. The FHSA also requires a description of any reasonable alternatives to the rule, together with a summary description of their costs and benefits, and a brief explanation of why such alternatives were not chosen. 15 U.S.C. 1262(i). In addition, the Commission must address the requirements of the Regulatory Flexibility Act, which considers effects on small firms, and the requirement for review pursuant to the National Environmental Policy Act.

4. Analysis of Hazardous Substance Ban [8]

(a) Benefits

While the benefits to consumers of eliminating lead-cored candlewicks as a source of lead exposure are not quantifiable, they are likely to be small since few lead-cored candlewicks are now produced and/or sold in the U.S. The likely benefits are dependent on individual circumstances of candle use. Laboratory studies indicate that under certain conditions of use exposure to airborne lead from burning candles with lead-cored wicks presents a risk of lead poisoning. Therefore, a ban may result in positive health benefits in individual cases.

In the mid-1970s, the Commission chose to defer to the industry's voluntary agreement to eliminate lead from candlewicks. Since this agreement did not prevent companies from returning to the use of lead-cored wicks in the 1980s and 1990s, a ban on the use of lead in candlewicks will help ensure that lead will not be used in candlewicks in the future.

(b) Costs

The costs of replacing lead-cored candlewicks with non-leaded wicks are expected to be small. The current use of lead in wicks is already small, since none of the NCA members use lead in their wicks beyond the acceptable trace levels found in zinc cores, and information obtained from an industry source indicates that the costs of substitutes for lead-cored wicks are not higher than costs of wicks made with lead.

There may be costs associated with labeling and ensuring conformance. Shipping carton labeling may be done by direct printing onto the carton or by affixing a pre-printed label, such as a sticker. On a per carton basis, direct printing is expected to be less costly than the use of a sticker. Labeling machines may cost as much as $15,000 and individual labels may cost five to 10 cents each. Assuming that 15–20 percent of all candles produced would be affected, and that each shipping carton holds 144 candles, valued at one dollar each, perhaps two to three million shipping cartons would require labeling annually. If labels cost five to 10 cents each, then annual costs would be about $100,000 to $300,000. The costs to candlewick manufacturers to label shipments of metal-cored candlewicks, expected to be substantially less than that of candles, are estimated to be about $80 to $320 per year.

Consistent with the Commission's lead in consumer products guidance policy at 16 CFR 1500.230, domestic producers, distributors, private labelers, importers, and retailers of metal-cored candlewicks and candles with such wicks may wish to test products to ensure compliance with the regulation. Alternatively, firms may wish to obtain assurances from suppliers that the lead content of the metal does not exceed 0.06 percent by weight. This should be relatively straightforward because candlewick manufacturers generally receive chemical analyses from the suppliers of the metal used in their candlewick production.

Finally, there may be costs associated with inventories of non-complying candlewicks held by manufacturers. The rule would apply to candlewicks or candles manufactured on and after the rule's effective date. Therefore, non-complying candlewicks would have to be scrapped under the regulation since they would no longer be usable in candle manufacturing on and after the effective date. It is not anticipated, however, that a large amount of candlewick inventory would be affected.

In summary, while the benefits of a ban of lead in candlewicks are likely to be small, the costs of the ban to the industry are small, and thus bear a reasonable relationship to the benefits. The action will contribute to the gradual reduction in lead exposure in the U.S. population.

5. Alternatives to the Rule

The Commission has considered several other alternatives, including: no action, product labeling, recordkeeping for wick/candle shipments and deferral to a voluntary standard. *See* discussions above at section G., Response to Comments on the NPR, and section H., Alternatives to Proposed Ban.

J. Paperwork Reduction Act

The ban regulation as proposed would have required manufacturers and importers of metal-cored candlewicks and candles with such wicks to perform testing or obtain records of testing, maintain records, and label shipping

[8] The following discussion of costs and benefits is extracted from Memorandum from Mary F. Donaldson, CPSC Directorate for Economic Analysis to Kristina Hatlelid, CPSC Directorate for Health Sciences, ''Final Regulatory Analysis of a Proposed Ban of Lead in Candlewicks,'' March 10, 2003. *See* footnote 2 for information on the availability of this and other related documents for this rulemaking.

containers for metal-cored candlewicks and candles with such wicks that they produce or import. For this reason, the proposed rule contained ''collection of information requirements,'' and would have been subject to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520.

As noted above in section G., Response to Comments, the Commission has elected to delete these recordkeeping requirements from the final rule issued today. Accordingly, the rule as finalized is not subject to the PRA.

K. Regulatory Flexibility Act Certification

When an agency issues a final rule such as the ban on lead-cored candlewicks and candles with such wicks, the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare a final regulatory flexibility analysis describing the impact of the rule on small businesses and other small entities. Section 605 of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of a rule to declare that metal-cored wicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances and to ban such wicks and candles. A copy of the preliminary analysis is available for inspection in the docket for this rulemaking. That assessment reported that the costs to consumers and candlewick and candle manufacturers were likely to be small.

After analyzing the comments received in response to the NPR, the CPSC staff has concluded that the incremental cost of the rules issued today is likely to be small. Accordingly, it is unlikely that the rules will have a substantial effect on a significant number of small businesses.

Based on the foregoing assessment, the Commission certifies that the rules issued today to declare that metal-cored wicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances and to ban such wicks and candles will not have a significant adverse impact on a substantial number of small businesses or other small entities.

L. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the hazardous substance declaration and ban for metal-cored candlewicks containing more than 0.06 percent lead by weight of the metal and candles with such wicks.

The Commission's regulations at 16 CFR 1021.5(c)(1) state that rules or safety standards to provide design or performance requirements for products normally have little or no potential for affecting the human environment. Assessment of the impact of the rules issued today indicates that they will have no significant effects on the environment. Thus, the Commission concludes that no environmental assessment or environmental impact statement is required in this proceeding.

M. Effective Date

The rule issued today provides an effective date 180 days after publication in the **Federal Register**. The time before that date may be used for depletion of any existing stocks of candlewick material and candles subject to the ban. The ban then applies to any metal-cored candlewick containing more than 0.06 percent lead by weight in the metal, and any candle with such a wick, that is manufactured or imported on or after that date.

N. Executive Order 12988

As provided for in Executive Order 12988 (February 5, 1996), the CPSC states the preemptive effect of these regulations as follows.

The FHSA provides that, generally, if the Commission issues a banning rule under section 2(q) of the FHSA to protect against a risk of illness or injury associated with a hazardous substance, ''no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations.'' 15 U.S.C. 1261n(b)(1)(B). Upon application to the Commission, a State or local standard may be excepted from this preemptive effect if the State or local standard (1) provides a higher degree of protection from the risk of injury or illness than the FHSA standard and (2) does not unduly burden interstate commerce. In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical requirement that provides a higher degree of protection than the FHSA requirement for the hazardous substance for the Federal, State or local government's own use. 15 U.S.C. 1261n(b)(2).

Thus, with the exceptions noted above, the rule banning metal-cored candlewicks containing more than 0.06 percent lead by weight of the metal and candles with such wicks preempts non-identical state or local requirements applicable to such wicks and candles designed to protect against the same risk of injury.

O. Conclusion

For the reasons stated in this preamble, the Commission finds that metal-cored candlewicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances, that cautionary labeling required by the FHSA is not adequate for such wicks and candles, and that, due to the degree and nature of the hazard presented by these items, in order to protect the public health and safety it is necessary to keep them out of commerce.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Reporting and recordkeeping.

■ For the reasons stated in the preamble, the Commission amends title 16 of the Code of Federal Regulation to read as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

■ 1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

■ 2. In § 1500.12, add a new paragraph (a)(2) to read as follows:

§ 1500.12 Products declared to be hazardous substances under section 3(a) of the act.

(a) * * *

(2) Metal-cored candlewicks that have a lead content of more than 0.06 percent of the total weight of the metal core, and candles made with such wicks.

* * * * *

■ 3. In § 1500.17, add new paragraphs (a)(13) and (b) to read as follows:

§ 1500.17 Banned hazardous substances.

(a) * * *

(13)(i) *Candles made with metal-cored wicks.* Candles manufactured or imported on or after October 15, 2003, made with metal-cored candlewicks, unless:

(A) The metal core of each candlewick has a lead content (calculated as the metal) of not more than 0.06 percent of the total weight of the metal core; and

(B) Each outer container or wrapper in which candles subject to paragraph (a)(13)(i)(A) of this section are shipped, including each outer container or wrapper in which such candles are distributed to a retail outlet, is labeled ''Conforms to 16 CFR 1500.17(a)(13).'' For purposes of this paragraph (B), the term ''outer container or wrapper'' does not include the immediate container in which candle(s) is/are intended to be displayed at retail or during use in the home, unless that container or wrapper is also the only container or wrapper in which the candle(s) is/are shipped to a retailer.

(ii) *Metal-cored candlewicks.* Metal-cored candlewicks manufactured or imported on or after October 15, 2003, unless:

(A) The metal core of each candlewick has a lead content (calculated as the metal) of not more than 0.06 percent of the total weight of the metal core; and

(B) Each outer container or wrapper in which candlewicks subject to paragraph (a)(13)(ii)(A) of this section is shipped, including each outer container or wrapper of a shipment distributed to a retail outlet, is labeled ''Conforms to 16 CFR 1500.17(a)(13).'' For purposes of this paragraph (B), the term ''outer container or wrapper'' does not include the immediate container in which candlewick(s) is/are intended to be displayed or sold at retail, unless that container or wrapper is also the only container or wrapper in which the candlewick(s) is/are shipped to a retailer.

(iii) *Findings*—(A) *General.* To issue a rule under section 2(q)(1) of the FHSA, 15 U.S.C. 1261(q)(1), classifying a substance or article as a banned hazardous substance, the Commission must make certain findings and include them in the regulation. These findings are discussed in paragraphs (a)(13)(iii)(B) through (D) of this section.

(B) *Voluntary Standard.* One alternative to the ban that the Commission considered is to take no mandatory action, and to depend on a voluntary standard. One organization has a standard for candlewicks intended to address the potential for substantial illness posed by such wicks and candles with such wicks. The Commission has found that the standard is technically unsound and that substantial compliance with it is unlikely. Furthermore, there is no evidence that the standard has been adopted and implemented by candlewick or candle manufacturers.

(C) *Relationship of Benefits to Costs.* The Commission estimates that the ban will reduce the potential for exposure to lead and resulting lead poisoning because there is no ''safe'' level of lead in the blood. The annual cost to the candle/wick industry of the ban is estimated by the Commission to be in the range of $100,000 to $300,000. On a percentage basis these costs represent only 0.005 to 0.015 percent of the overall value of candle shipments in 2000, which was approximately $2 billion. Accordingly, the Commission finds that the benefits from the regulation bear a reasonable relationship to its costs.

(D) *Least burdensome requirement.* The Commission considered the following alternatives: no action; labeling all metal-cored candles with wicks containing more than 0.06 percent lead by weight of the metal; recordkeeping for shipments of wicks containing 0.06 percent or less lead by weight of the metal and of candles with such wicks; and relying on the voluntary standard. Neither no action, nor labeling, nor reliance on the voluntary standard would adequately reduce the risk of illness. Recordkeeping for shipments of wicks and of candles was not the least burdensome requirement that would prevent or adequately reduce the risk of illness. Therefore the Commission finds that a ban on candlewicks containing more than 0.06 percent lead by weight of the metal and candles with such wicks is the least burdensome requirement that would prevent or adequately reduce the risk of illness.

(b) [Reserved].

Dated: April 9, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

Appendix—

List of Relevant Documents

(This Appendix Will Not Appear in the Code of Federal Regulations)

The following documents contain information relevant to this rulemaking, can be accessed on the world-wide web at *www.cpsc.gov*, and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814:

1. Briefing memorandum from Kristina M. Hatlelid, Ph.D., M.P.H., Toxicologist, Directorate for Health Sciences, to the Commission, ''Petition HP 00–3 to Ban Lead-cored Candlewicks,'' December 12, 2000.
2. Memorandum from K.M. Hatlelid, Ph.D., M.P.H., Toxicologist, Directorate for Health Sciences, to Mary Ann Danello, Ph.D., Associate Executive Director, Directorate for Health Sciences, ''Review of Lead Emissions from Candles,'' November 15, 2000.
3. Memorandum from Carolyn Meiers, Engineering Psychologist, Human Factors, to Kristina Hatlelid, Ph.D., M.P.H., Directorate for Health Sciences, ''Labeling of Candles with Lead-cored Wicks (Petition HP 00–3),'' October 18, 2000.
4. Briefing memorandum from Kristina M. Hatlelid, Ph.D., M.P.H., Toxicologist, Directorate for Health Sciences, to the Commission, ''Proposal to Ban Lead-Cored Candlewicks,'' March 18, 2002.
5. Memorandum from Mary F. Donaldson, CPSC Directorate for Economic Analysis to Kristina Hatlelid, CPSC Directorate for Health Sciences, ''Preliminary Regulatory Analysis of a Proposed Ban of Lead in Candlewicks,'' March 5, 2002.
6. ''Briefing Package for Ban of Candles with Lead-containing Wicks and Wicks for Candle-making that Contain Lead—Final Rule,'' Kristina M. Hatlelid, Ph.D., M.P.H., Toxicologist, Directorate for Health Sciences, March 27, 2003.

[FR Doc. 03–9255 Filed 4–17–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 012–2003]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

ACTION: Final rule.

SUMMARY: The Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), is exempting five Privacy Act systems of records from the subsections of the Privacy Act listed below. The five systems of records were published in the **Federal Register** on January 24, 2003 (68 FR 3551). As described in this rule, the exemptions are necessary to protect law enforcement and investigatory information and functions of ATF.

EFFECTIVE DATE: This final rule is effective April 18, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Cahill (202) 307–1823.

SUPPLEMENTARY INFORMATION: The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

On November 25, 2002, the President signed into law the Homeland Security

Act of 2002, Pub. L. 107–296, 116 Stat. 2135 (2002). Under Title XI, Subtitle B of the Act, the ''authorities, functions, personnel, and assets'' of the Bureau of Alcohol, Tobacco, and Firearms are transferred to the Department of Justice, with the exception of certain enumerated authorities that were retained by the Department of the Treasury. The functions retained by the Department of the Treasury are the responsibility of a new Alcohol and Tobacco Tax and Trade Bureau. Section 1111 of the Homeland Security Act further provides that the Bureau will retain its identity as a separate entity within the Department of Justice known as the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). The transfer took effect January 24, 2003.

In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, on January 24, 2003, ATF published its Privacy Act systems of records and converted certain ATF systems of records from Department of the Treasury systems to Department of Justice systems pursuant to the reorganization and transfer of ATF to the Department of Justice. (The publication of these systems of records as Justice systems does not rescind the Treasury/ATF systems of records, as they govern the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury.) There has been no change in the maintenance or operations of the systems of records by ATF, nor has there been a change in the exemptions claimed. Rather, these systems notices were published to reflect the transfer of ATF to the Department of Justice.

Because the transfer of ATF to the Department of Justice was effective on January 24, 2003, it was necessary to immediately establish all appropriate exemptions to the Privacy Act in order to protect law enforcement and investigatory information and functions of ATF. These exemptions needed to be effective on January 24, 2003, the date of the transfer. It would be contrary to the public interest to allow the disclosure of information that could compromise ongoing investigations and law enforcement activities of the ATF. Accordingly, pursuant to the good cause exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3), the Department found that notice and public procedure on this rule were impracticable and contrary to the public interest.

However, comments were requested on or before March 25, 2003. No comments were received. Therefore, the Department of Justice is issuing a final rule.

Regulatory Flexibility Act

This rule relates to individuals, as opposed to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act 5 U.S.C. 601–612, the rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information, and Privacy.

Accordingly, the interim rule amending 28 CFR part 16 which was published at 68 FR 3392 on January 24, 3003, is adopted as final without change.

Dated: April 9, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 03–9324 Filed 4–17–03; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 551

[BOP–1002–F]

RIN 1120–AA03

Public Works and Community Service Projects

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document finalizes Bureau of Prisons (Bureau) interim rules on volunteer community service projects. Volunteer community service projects provide for the public good. They are developed by local government or by a non-profit charitable organization for Bureau approval. This rule provides for inmates' voluntary participation in a volunteer community service project. We intend this rule to promote the public interest and provide for the security and good order of the institution by reducing inmate idleness.

EFFECTIVE DATE: May 19, 2003.

ADDRESSES: Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: In this document, the Bureau finalizes its regulations in 28 CFR part 551, subpart F, on Public Works and Community Service Projects. We published this rule in the **Federal Register** as an interim rule on January 19, 1993 (58 FR 5210).

Under the interim rule, a volunteer community service project provides for the public good, in keeping with the overall goals of the community, such as community-wide beautification and public safety. The project must be developed by local government or by a non-profit charitable organization for Bureau approval. A community service project is not a work assignment. Any inmate who chooses to participate does so voluntarily, and may not receive performance pay for participation in the project.

Existing Bureau regulations provide for inmate monetary contributions to an international, national, or local organization, including political parties, so long as the contribution does not violate any law or regulation (*see* 28 CFR 551.50). This amendment expands this policy by specifying how an inmate may choose to make a contribution of time and effort through participation in an approved volunteer community service project. The charitable activity resulting from participation in a volunteer community service project may not impair contracts for services in the community.

We published this rule as an interim final rule on January 19, 1993 (58 FR 5210). Since we received no comments on this rule, we are publishing it as final, without change.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'', section 1(b), Principles of Regulation. The Director, Bureau of Prisons has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies

that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 28 CFR Part 551

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

Accordingly, for the reasons discussed above, we adopt as final the interim final rule published on January 19, 1993 (58 FR 5210), without change.

[FR Doc. 03–9596 Filed 4–17–03; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD07–03–041]

RIN 1625–AA08

Special Local Regulations; Miami Beach Super Boat Race, Miami Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Miami Beach Super Boat Grand Prix powerboat race. This event will be in the Atlantic Ocean, off Miami Beach, Florida on April 27, 2003. This regulation is necessary to provide for the safety of life on navigable waters during the event.

DATES: 33 CFR 100.730 is suspended from April 1, 2003 until April 30, 2003. Temporary § 100.35T–07–041 is effective from 10 a.m. until 4 p.m. on April 27, 2003.

ADDRESSES: Documents indicated in the preamble are available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida, between the hours of 7:30 a.m. and 3 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BM1 D. Vaughn, Coast Guard Group Miami, Florida at (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public associated with the large number of vessels expected for this event. Permanent special local regulations similar to this temporary rule have been in place for this event since 1998 effective on the third Sunday in April each year. However, this year the third Sunday in April is Easter Sunday. The race organizers are moving the race date this year to avoid a conflict with the holiday.

For the same reasons, under 5 U.S.C. 553, good cause exists for making this regulation effective in less than 30 days after publication in the **Federal Register**.

Background and Purpose

Super Boat International Productions Inc., is sponsoring a high-speed power boat race that will take place on April 27, 2003 in the Alantic Ocean off Miami Beach, Florida. Approximately 35 race boats, ranging in length from 24 to 50 feet, will participate in the event. There will also be approximately 200 spectator craft in the area. The race boats will be competing at high speeds with numerous spectator vessels on scene, requiring control over vessel traffic in the area.

Discussion of Rule

These regulations create two regulated areas offshore from Miami Beach for this event. The first regulated area surrounds the race course and non-participant vessels are prohibited from entering this area without authorization from the Coast Guard Patrol Commander. The second regulated area establishes a spectator craft viewing area where spectator vessels may enter to watch the race.

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 (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, because non-participant vessels are only prohibited from entering one of the regulated areas for 6 hours on the day of the event. Also, vessels should be able to transit around this one regulated area.

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, because non-participant vessels are only prohibited from entering one of the regulated areas for 6 hours on the day of the event. Also, vessels should be able to transit around this one regulated area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded under figure 2–1, paragraph 34(h), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.

■ 2. From April 1, 2003 until April 30, 2003, temporarily suspend 33 CFR 100.730

■ 3. Add a new temporary § 100.35T–07–041 to read as follows:

§ 100.35T–07–041 Miami Beach Super Boat Race; Miami Beach, Florida.

(a) *Regulated areas.* (1) *Race course.* A regulated area is established by a line joining the following points:

Corner point 1: 25–46.30 N, 080–07.85 W

Corner point 2: 25–46.30 N, 080–06.82 W

Corner point 3: 25–51.30 N, 080–06.20 W

Corner point 4: 25–51.30 N, 080–07.18 W.

All coordinates reference Datum NAD: 83.

(2) *Spectator area.* A regulated area is established in the vicinity of the race course for spectator traffic and is defined by a line joining the following points:

Corner point 1: 25–51.30 N, 080–06.15 W

Corner point 2: 25–51.30 N, 080–05.85 W

Corner point 3: 25–46.30 N, 080–06.55 W

Corner point 4: 25–46.30 N, 080–06.77 W.

All coordinates reference Datum NAD: 83.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commander, Coast Guard Group Miami, Florida.

(c) *Special local regulations.* (1) Non-participant vessels are prohibited from entering the race course regulated area unless authorized by the Coast Guard Patrol Commander.

(2) When notified by the Coast Guard Patrol Commander, after the completion of scheduled races and the departure of participants from the race course regulated area, vessel traffic may resume normal operations. (3) At the discretion of the Coast Guard Patrol Commander, traffic may be permitted to resume normal operations between scheduled racing events.

(d) *Effective date.* This rule is effective from 10 a.m. to 4 p.m. on April 27, 2003.

Dated: April 10, 2003.

F.M. Rosa,

Captain, U.S. Coast Guard, Acting, Commander, Seventh Coast Guard District.

[FR Doc. 03–9647 Filed 4–17–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA91

Title I—Improving the Academic Achievement of the Disadvantaged; Correction

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations; correction.

SUMMARY: The Department published, in the **Federal Register** of December 2, 2002, regulations governing the programs administered under Title I, parts A, C and D of the Elementary and Secondary Education Act (ESEA), as amended. The December 2, 2002 document contained minor errors regarding the Title I, part C, Migrant Education Program. This document corrects the errors.

DATES: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: James English, Office of Migrant Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, Room 3E315, FOB–6, SW., Washington, DC 20202–6135. Telephone: (202) 260–1394 or via the Internet: *james.english@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: In the final regulations published on December 2, 2002 (67 FR 71710), make the following corrections:

PART 200—[CORRECTED]

§ 200.82 [Corrected]

■ 1. On page 71737, in the first column, the introductory text of § 200.82 is corrected by revising the cross-reference from ''§ 200.101'' to ''§ 200.100(b)(4).''

§§ 200.83, 200.84 [Corrected]

■ 2. On page 71737, in the third column, the Office of Management and Budget control number is corrected to be 1810–0662 for §§ 200.83 and 200.84.

§ 200.86 [Corrected]

■ 3. On page 71737, in the third column, the text of § 200.86 is corrected by revising the cross-reference from ''§ 200.28(c)(3)(i)'' to ''§ 200.29(c)(1).''

§ 200.88 [Corrected]

■ 4. On page 71738, in the first column, the Office of Management and Budget control number is corrected to be 1810–0662 for § 200.88.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number 84.011: Title I, Education of Migrant Children)

Dated: April 15, 2003.

Eugene W. Hickok,

Under Secretary of Education.

[FR Doc. 03–9654 Filed 4– 17–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR Part 668

Student Assistance General Provisions

CFR Correction

In Title 34 of the Code of Federal Regulations, parts 400 to end, revised as of July 1, 2002, on page 418, § 668.8 is corrected by reinstating paragraph (i) to read as follows:

§ 668.8 Eligible program.

* * * * *

(i) *Flight training.* In addition to satisfying other relevant provisions of this section, for a program of flight training to be an eligible program, it must have a current valid certification from the Federal Aviation Administration.

* * * * *

[FR Doc. 03–55512 Filed 4–17–03; 8:45 am]

BILLING CODE 1505–01–D

POSTAL SERVICE

39 CFR Part 964

Rules of Practice Governing Disposition of Mail Withheld from Delivery Pursuant to 39 U.S.C. 3003, 3004

CFR Correction

In Title 39 of the Code of Federal Regulations, revised as of July 1, 2002, on page 326, § 964.6 is corrected by removing the second sentence.

[FR Doc. 03–55511 Filed 4–17–03; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129, FCC 03–42]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses issues raised in petitions for reconsideration implementing section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Section 258 prohibits the practice of ''slamming,'' the unauthorized change in a subscriber's selection of a provider of telephone exchange or toll service. Slamming distorts the telecommunications market by enabling companies that engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. We believe that the slamming rules instituted by the Commission will further the Commission's goal of preventing anti-competitive behavior while protecting consumer choice.

DATES: Effective June 2, 2003, except for sections 64.1120, 64.1160, 64.1170 and 64.1180, which contain information

collection that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections. Written comments by the public on the new and/or modified information collection requirements are due June 2, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection on or before June 17, 2003.

ADDRESSES: Parties who choose to file comment by paper must file an original and four copies to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at *www.fcc.gov/e-file/ecfs.html.* In addition to filing comments with Office of the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson at 202–418–2512, Consumer & Governmental Affairs Bureau. For additional information concerning the information collection(s) contained in this document, contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in CC Docket No. 94–129, FCC 03–42, released March 17, 2003. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

Paperwork Reduction Act: This Reconsideration Order contains modified or revised information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this Reconsideration Order, as required by the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13.

Synopsis of Order on Reconsideration

1. In this document, the Commission addresses a petition seeking reconsideration of Commission rules prohibiting carriers that effect requests for subscriber carrier changes submitted by other carriers from re-verifying such requests before executing the requested changes. We continue to believe that the Commission's prohibition on executing carrier verification advances and is proportionate to the goal of preventing anti-competitive behavior by executing carriers and protecting consumer choice. The Commission found that executing carrier re-verification could diminish consumer choice and impede competition, and would be expensive, unnecessary and duplicative of the submitting carriers verification.

2. *Use of Carrier Change Information for Marketing Purposes.* The Commission clarifies that, to the extent that the retail arm of an executing carrier obtains carrier change information for marketing purposes through its normal channels in a form available throughout the retail industry, and after the carrier change has been completed, we do not prohibit the use of that information in executing carriers' efforts to gain back that customer. In addition, we note that our decision here is not intended to preclude individual state actions in this area that are consistent with our rules.

I. Verification of Carrier Changes

A. Independent Third Party Verification

3. The Commission recognizes that dropping off a three-way call could potentially be infeasible for carriers in certain specific situations; for example, a carrier may not be able to comply with the drop-off rule because its sales force is located in an area with an exchange that does not employ the technology necessary to support a drop-off. Accordingly, we will exempt from the rule those carriers that certify to the Commission that their sales agents are unable to drop off the sales call after initiating a third party verification. Such carriers will be exempt from the drop-off requirement for a period of two years from the date the certification is received by the Commission. Carriers that wish to extend their exemption from the rule must, at the end of the two year period (and every two years thereafter) re-certify to the Commission as to their continued inability to comply. For any carrier that certifies that it is unable to comply with the drop-off requirement, we emphasize that, in any case, the third party verification must be terminated if the sales agent of an exempted carrier responds to a consumer's inquiries after a verification attempt has begun. A new verification may be initiated only after the sales agent has finished responding to the customer. Consistent with our rules, any neutral, factual information that is provided by a third party verifier should not mirror the carrier's particular marketing pitch, nor should it market the carrier's services or be an extension of the sales call. Instead, it should clearly verify the subscriber's decision to change carriers. Commission rules also require the verification process (*i.e.*, everything the subscriber says and hears during the verification call) to be taped and preserved for a period of two years in order to ensure the availability of a complete and accurate record for investigation of any slamming complaint. If a carrier does not comply with the rule the verification is invalid. We will continue to review third party verification recordings when evaluating slamming complaints and will aggressively enforce our liability rules.

B. 60-Day Limit on the Effectiveness of an LOA

4. In the *Third Report and Order,* the Commission found that a reasonable limitation on the amount of time an LOA should be considered valid is 60 days. The Commission concluded that the 60-day limit applies to submitting carriers rather than executing carriers, because a submitting carrier is an actual party to the contractual agreement with the customer and, as such, is more capable of conforming its behavior to the obligation. AT&T asks that the Commission modify its rule to exempt multi-line and/or multi-location business customers from the 60-day limit. We agree with AT&T that such a limitation would needlessly invalidate these negotiated LOAs and would not confer additional consumer protection benefits upon the parties. Accordingly, upon reconsideration, we will no longer limit the effectiveness of such customers' LOAs to 60 days.

C. Identification of the Subscriber's Current Telecommunications Provider

5. In the *Third Report and Order,* the Commission concluded that a script for third party verification should elicit, at a minimum, the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved (*i.e.*, local, in-state toll, out-of-state toll, or international service). AT&T asks the Commission to eliminate the requirement that independent third party verifications elicit from the customer the identity of

the customer's current telecommunications provider. AT&T states that the sole relevant consideration in executing a change order is identification of the carrier to whose service the change is being authorized, not the identity of the carrier being displaced. AT&T asserts that requiring carriers to compile and provide the identity of the customer's current carrier is disruptive, superfluous and burdensome. On reconsideration, we agree that it is unnecessary for a subscriber to identify in an independent third party verification the identity of the displaced carrier. Accordingly, we find that such identification need not be provided by the subscriber, either in LOAs or independent third party verifications

D. Effecting Freeze Lifts and Change Requests in the Same Three-Way Call

6. AT&T asks the Commission to require executing carriers to lift freezes and to process carrier change requests in the same three-way call. We agree that AT&T fails to raise any arguments that were not thoroughly considered in previous orders in this proceeding. In the *Second Report and Order,* the Commission declined to enumerate all acceptable procedures for lifting preferred carrier freezes. Rather, parties were encouraged to develop other methods of accurately confirming a subscriber's identity and intent to lift preferred carrier freezes, in addition to offering written and oral authorization.

E. Registration Requirement

7. In the *Third Report and Order,* the Commission adopted a requirement that all new and existing common carriers providing interexchange telecommunications service must register with the Commission. The Commission further concluded that facilities-based carriers shall have an affirmative duty to ascertain whether a potential carrier-customer (*i.e.*, a reseller) has filed a registration with the Commission prior to providing that carrier-customer with service.'' WorldCom asks that Commission to clarify that underlying carriers are not under a duty to take any action with regard to carrier-resellers if: (1) the underlying carrier ''does not receive a notification of registration from an existing carrier-customer,'' and/or (2) the underlying carrier's ''existing carrier-customer does not appear on the list maintained by the Commission. As noted in the *Third Report and Order,* a facilities-based carrier will not be responsible for the accuracy of the registration information, nor will such a carrier, relying in good faith on the absence of such registration, be liable under section 251 of the Act for withholding service from the unregistered entity. The Commission may, however, after giving appropriate notice and opportunity to respond, impose a fine on carriers that fail to determine the registration status of carrier customers.

II. Liability for Unauthorized Carrier Changes

8. *Customer referral to unauthorized carrier.* In its petition, WorldCom asserts that the Commission should require carriers contacted by a subscriber alleging slamming to inform the subscriber that he or she should contact and seek resolution from the alleged unauthorized carrier, in addition to informing the subscriber of their right to file a complaint if necessary and of their right to absolution. We currently require carriers contacted by a subscriber alleging slamming to inform the subscriber of their right to file a complaint with the appropriate governmental agency. On reconsideration, we will also require carriers to inform the subscriber that he or she may contact and seek resolution from the alleged unauthorized carrier and, in addition, may contact the authorized carrier.

9. *Removal of charges from subscriber bills when a subscriber has not yet paid the charges.* WorldCom also asks the Commission to reconsider its rule requiring alleged unauthorized carriers to remove all charges assessed for the first 30 days of services from a subscriber's bill upon the subscriber's allegation that he or she was slammed. We decline to modify our rule requiring removal by the unauthorized carrier of all charges assessed for the first 30 days of service upon a subscriber's allegation that he or she was slammed.

10. *Amounts owed by unauthorized carriers when the subscriber has paid the unauthorized carrier.* Section 258 mandates that the unauthorized carrier ''shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation.'' The Commission stated that, once a carrier has been found guilty of slamming, the unauthorized carrier shall be required to disgorge to the authorized carrier an amount adequate to satisfy both of these obligations. The Commission found that an approximate proxy for this amount is 150% of the amounts collected by the unauthorized carrier from the subscriber following a slam. Upon receipt of the money, the authorized carrier is required to remit one third (*i.e.,* 50% of what the subscriber paid to the unauthorized carrier) to the injured subscriber. WorldCom asks that the Commission reconsider its requirement that unauthorized carriers pay the subscriber's authorized carrier 150% of all charges paid by such subscriber. We decline to modify our finding that unauthorized carriers must pay the subscriber's authorized carrier 150% of all charges paid by such subscriber and, upon receipt of the money, that the authorized carrier is required to remit one third (*i.e.,* 50% of what the subscriber paid to the unauthorized carrier) to the injured subscriber.

11. *Unauthorized carrier changes resulting from LEC actions.* In their Petitions, Sprint and WorldCom note that subscribers sometimes request carrier changes by communicating directly with LECs. Sprint and WorldCom ask that the Commission reconsider its ''apparent decision'' to classify as an IXC slam any unauthorized carrier change that occurred as a result of a LEC mistakenly executing a carrier change and informing an IXC that it had gained a customer. We agree with Sprint that it would be unfair to hold IXCs liable for slamming pursuant to section 258 when the unauthorized carrier change was the result of a LEC's action.

III. Other Issues

12. *Toll-Free Service Accounts.* SBC also seeks clarification that the carrier change verification requirements set forth in the *Second Report and Order* do not apply to verifications of Responsible Organization (''RespOrg'') changes for toll-free service accounts. A RespOrg is the entity that a consumer seeking to acquire a toll-free number must contact. In a subsequent *Clarification Order,* the Common Carrier Bureau stated that, by requiring ''proper written authorization,'' it did not intend to preclude the current SMS/800 administrator practice of accepting LOAs for RespOrg change requests that contain a subscriber's personal identification number in lieu of the subscriber's signature. Inasmuch as SBC is seeking a requirement that all RespOrg change requests include LOAs with customer signatures, we note that the *Clarification Order* disallows such a result.

13. *New Lines and New Installations.* AT&T asks the Commission to clarify, or in the alternative reconsider and hold, that the slamming rules apply to customers' initial carrier selections for newly installed lines. We decline AT&T's request to clarify, or in the alternative reconsider and hold, that our slamming rules apply to new installations. As noted previously,

section 258 of the Act provides that ''[n]o telecommunications carrier shall submit or execute a change in subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' We emphasize, however, that the statue does encompass all changes in a subscriber's selection of a provider of telecommunications service, regardless of whether such change occurs at the same time a subscriber changes residences or when a business relocates or expands. It is no less important for carrier change verification to be obtained when a consumer is receiving the service on new lines than when the carrier change occurs without new line installations.

14. *Carrier Reporting of Slamming Allegations (Form 478).* Sprint and WorldCom ask the Commission to reconsider its carrier reporting requirement. According to our rules, carriers providing telephone exchange service and/or telephone toll service must periodically submit to the Commission reports regarding complaints they receive concerning unauthorized carrier changes. In the *Third Report and Order,* the Commission directed each carrier to submit a reporting form (Form 478) identifying the number of slamming complaints received and the number of such complaints that the carrier has investigated and found to be valid. The Commission also required carriers to identify the number of slamming complaints involving local, intrastate, and interstate exchange service, investigated or not, that the carrier has resolved directly with subscribers. Upon reconsideration, we find that the carrier reporting requirement should be eliminated. We therefore remove § 64.1180 of our rules. Our experience since the adoption of the requirement has shown that the information contained in such reports is of limited utility in investigating allegations of slamming; at the same time, it appears that the burdens associated with filing the reports are significant.

15. *More Stringent Verification Requirements.* In its Petition for Reconsideration of the *First Reconsideration Order,* WorldCom asks the Commission to clarify that, when determining whether a change was authorized, the states must use the Commission's definition of subscriber as set forth in the *Third Report and Order.* We confirm that, in the areas in which the states have jurisdiction, federal verification procedures constitute a ''floor,'' and the states may choose to impose more stringent requirements, so long as they are consistent with the federal requirements. WorldCom does not identify a specific state law or laws that it would seek to have preempted, nor does it describe how the particular law(s) conflicts federal law or obstructs federal objectives. In the absence of such evidence, we decline to preempt state laws regarding the definition of ''subscriber'' in the context of carrier change verification.

16. *Underlying Facilities-Based Carrier Changes.* In the *Second Report and Order,* the Commission adopted rules to clarify the appropriate use of preferred carrier freezes. Since the implementation of the *Second Report and Order,* we have received inquiries from LEC representatives who expressed concern about the risks of ''lifting'' a customer's preferred carrier freeze in order to permit the customer's preferred carrier, a switchless reseller, to begin using the network of a different facilities-based carrier. Based on our experiences, we clarify here that we do not consider it a lifting of a preferred carrier freeze when a LEC implements the request of a switchless reseller to change its underlying carrier, and makes the technical changes necessary to permit the reseller's customer to retain his or her chosen carrier. Under these circumstances, the subscriber's preferred carrier is the switchless reseller, and the subscriber does not experience a carrier change when the reseller merely makes a change to the underlying facilities it utilizes.

17. *Resolution of Informal Complaints.* In the *First Order on Reconsideration,* we modified our informal complaint rules to better address the adjudication of unauthorized carrier change complaints. The rule modifications were intended to give consumers a wider array of remedies than was available under the former informal complaint rules, which did not provide for the Commission to order monetary payments by carriers to consumers in situations involving unauthorized carrier changes. Our current rules regarding informal complaints filed pursuant to section 258 state that ''[t]he Commission will issue a written (or electronic) order informing the complainant, the unauthorized carrier, and the authorized carrier of its finding, and ordering the appropriate remedy, if any, as defined by §§ 64.1160 through 64.1170 of this chapter.'' Given our experience with the resolution of unauthorized carrier change complaints since the promulgation of these rules, we believe that permitting flexibility as to the form of complaint determinations allows for more efficient use of Commission resources and would speed the resolution of complaints. Accordingly, we clarify that, under the appropriate circumstances, the Commission may issue an order addressing an informal slamming complaint in the form of a letter, written or electronic, containing the information required by our rules.

F. Accessible Formats

18. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov.*

IV. Procedural Matters

G. Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the proposals set forth in the Second FNPRM.

H. Paperwork Reduction Act Analysis

20. This *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking* contains either a new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking* as required by the Paperwork Reduction Act of 1995, Public law 104–13. Public and agency comments are due June 17, 2003.

I. *Ex Parte* Presentations

21. This is a permit-but disclose notice and comment rulemaking proceeding. Members of the public are advised that ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the Commission's rules.

Supplemental Final Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Third Report and Order and Second Order on Reconsideration.* The Commission sought written public comment on the proposals in the *Third Report and Order,* including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Third Report and Order.* The Commission

received a number of petitions for reconsideration in response to the *Third Report and Order.* Certain comments received are discussed below, including two received in response to the IRFA. The instant *Order* addresses issues raised in those reconsideration petitions and other petitions. This associated Supplemental Final Regulatory Flexibility Analysis (SFRFA) reflects revised or additional information to that contained in the FRFA. This SFRFA is thus limited to matters raised in response to the *Third Report and Order* and addressed in the instant *Order.* This SFRFA conforms to the RFA.

A. Need for and Objectives of This Order and the Rules Adopted Herein

23. Section 258 prohibits any telecommunications carrier from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service. This practice, known as ''slamming,'' distorts the telecommunications market by enabling companies that engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. In this *Order,* we address certain issues raised in petitions for reconsideration of the *Second Report and Order and Further Notice of Proposed Rulemaking,* the *First Order on Reconsideration,* and the *Third Report and Order.* Specifically, in this Order we modify the drop-off rule to allow the sales agents of certain carriers to remain on the line during the Third Party Verification (TPV). We also discuss small business concerns with respect to this rule. We exempt ''multi-line and/or multi-location business customers'' from our rule imposing a 60-day limit on the amount of time an Letter of Agency (LOA) may be considered valid. We decline to hold Interexchange Carriers (IXCs) liable for slamming pursuant to section 258 when the unauthorized carrier change was the result of an LEC mistake, and LECs must verify carrier change requests made by a customer directly to the LEC according to our verification rules. We no longer require carriers that provide telephone exchange service and/or telephone toll service to periodically submit to the Commission allegations of slamming. We do not require a subscriber to identify, either in LOAs or third party verifications, the identity of the displaced carrier. This *Order* also contains a Further Notice of Proposed Rulemaking, in which we propose several additional modifications to our carrier change rules. Specifically, we seek comment on rule modifications with respect to third party verifications.

B. Summary of Significant Issues Concerning Small Entities

24. Two commenters responded directly to the IRFA: Voicelog and SBA. VoiceLog filed a Petition for Partial Stay and Reconsideration of the *Third Report and Order.* VoiceLog argues that that drop-off rule is overbroad, impractical, and unenforceable and is not competitively neutral with respect to other third party verification methods. The SBA argues that the Commission adopted the drop-off rule without raising the issue in an IRFA and that the Commission did not solicit comment on compliance costs and alternatives in either the *Second Report and Order* or the *Third Report and Order.* In response to VoiceLog's arguments, the Commission modified the drop-off requirement to balance the independence of the third party verification with the concerns of those smaller carriers. The Regulatory Flexibility concerns of VoiceLog and SBA are discussed in paragraphs 44–45 of the *Third Report and Order.*

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

25. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations.

26. The definition of ''small governmental jurisdiction'' is one with populations of fewer than 50,000. There are approximately 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

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

28. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 1,329 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, we estimate that the majority of providers of local exchange services are small entities that may be affected by the rules and policies adopted herein.

29. *Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific small business size standard for providers of competitive local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 532 companies reported that they were engaged in the provision of either competitive access

provider services or competitive local exchange carrier services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of competitive local exchange services are small entities that may be affected by the rules.

30. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a specific size standard for competitive access providers (CAPS). The closest applicable standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 532 CAPs or competitive local exchange carriers and 55 other local exchange carriers reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 competitive access providers and competitive local exchange carriers, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. Of the 55 other local exchange carriers, an estimated 53 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of small entity CAPS and the majority of other local exchange carriers may be affected by the rules.

31. *Local Resellers.* The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 134 companies reported that they were engaged in the provision of local resale services. Of these 134 companies, an estimated 131 have 1,500 or fewer employees and 3 have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers may be affected by the rules.

32. *Toll Resellers.* The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 576 companies reported that they were engaged in the provision of toll resale services. Of these 576 companies, an estimated 538 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that a majority of toll resellers may be affected by the rules.

33. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 229 carriers reported that their primary telecommunications service activity was the provision of interexchange services. Of these 229 carriers, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. Consequently, we estimate that a majority of IXCs may be affected by the rules.

34. *Operator Service Providers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 22 companies reported that they were engaged in the provision of operator services. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that a majority of local resellers may be affected by the rules.

35. *Prepaid Calling Card Providers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that a majority of prepaid calling providers may be affected by the rules.

36. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 42 carriers reported that they were engaged in the provision of ''Other Toll Services.'' Of these 42 carriers, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that a majority of ''Other Toll Carriers'' may be affected by the rules.

D. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

37. Below, we analyze the projected reporting, recordkeeping, and other compliance requirements that may affect small entities.

38. *Verification of Carrier Changes—Independent Third Party Verification.* We modify our rule on third party verification to exempt carriers that certify to the Commission that they are unable to comply with the rule. We are persuaded that compliance with the current drop-off rule may be infeasible for carriers, including smaller carriers, that lack the technical means to comply or for which enabling equipment upgrades are economically infeasible. However, if a sales agent of an exempted carrier responds to a request by the customer for additional information, the third party verification must be terminated. A new third party verification may commence only after the sales agent has finished responding to the customer inquiry. Any third party verification obtained before a carrier's sales representative has finished providing information regarding the carrier change will not be considered valid. The modification, as created here, will therefore likely reduce the costs for upgrading the network and revising internal processes for signing up new customers, and retraining employees on how to use the new network upgrades and internal processes. We were not able to identify alternatives that would have lessened the economic impact on small entities while remaining consistent with the Commission's objectives.

39. *60-Day Limit on the Effectiveness of an LOA.* We exempt multi-line and/or multi-location business customers from the 60-day limit. The Commission concludes that this requirement would not impose significant additional costs or administrative burdens on small carriers.

40. *Unauthorized Carrier Changes Resulting From LEC Actions.* We decline to hold the IXC liable for slamming when the unauthorized carrier change was the result of a LEC mistake. LECs will be liable for unauthorized carrier changes that are the result of the LEC's mistake. LECs will also be required to follow the Commission's series of verification rules when a customer contacts the LEC directly to request a carrier change.

41. *Carrier Reporting of Slamming Allegations (Form 478).* The Commission will no longer require carriers that provide telephone exchange service and/or telephone toll service to periodically submit to the Commission reports regarding complaints they receive alleging unauthorized carrier changes—form 478. The change in the rule will alleviate the administrative burdens associated with filing the reports.

E. Steps Taken To Minimize the Significant Economic Impact of This Order on Small Entities, Including the Significant Alternatives Considered

42. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

43. *Verification of Carrier Changes—Independent Third Party Verification.* The Commission was persuaded by VoiceLog that compliance with the rule as created in the *Third Report and Order* may have been infeasible for some carriers, including smaller carriers, and therefore in order to minimize any adverse impact of the TPV rule on small entities, the Commission modified the TPV rule to allow for an exception for those carriers that certify that they are unable to comply with the drop-off rule. Other alternatives where suggested by VoiceLog and AT&T, including allowing the sales agent to remain on the line and answer questions during verification were rejected because they either compromised the independent nature of the third party verification or were not likely to have an effect on our goals of reducing slams. Self-certification will likely be less costly to a small business than the costs in upgrading the network and revising internal processes for signing up new customers, and retraining employees on how to use the new network upgrades.

44. *60-Day Limit on the Effectiveness of an LOA.* We expect that exemption we create will have no significant economic impact on carriers.

45. *Unauthorized Carrier Changes Resulting from LEC Actions.* The Commission is persuaded that when a LEC has assigned a subscriber to a non-affiliated carrier without authorization, and where the subscriber has paid the non-affiliated carrier the charges for the billed service, the LEC shall reimburse the subscriber for all charges paid by the subscriber to the unauthorized carrier and shall switch the subscriber to the desired carrier at no cost to the subscriber. When the subscriber has not paid the unauthorized carrier, the LEC shall switch the subscriber to the desired carrier at no cost to the subscriber, and shall also secure the removal of the unauthorized charges from the subscriber's bill. In order to deter such actions, we believe that a LEC should be held responsible for unauthorized carrier changes that favor its long distance affiliate, in the same manner that an IXC would be held responsible if it submitted an unauthorized change itself. The alternatives, *i.e.*, holding the customer or the carrier liable for mistakes made by the LEC were rejected as contrary to the slamming portions of the Act and fundamentally unfair. Because LECs will be held responsible for their own mistakes, LECs must also follow our verification rules when contacted directly by a subscriber that requests a carrier change, such that a record of the carrier change request is created and maintained.

46. *Carrier Reporting of Slamming Allegations (Form 478).* In eliminating our rule requiring carriers to submit Form 478, the Commission removed the burdens placed on carriers to provide information that could be misleading and damaging to a carrier; LECs in particular may have great difficulty complying with the requirements in an accurate manner. This change in our rule will likely reduce significantly the administrative burdens on carriers, including those smaller carriers.

47. *Report to Congress:* The Commission will send a copy of the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking (Second Further Notice)*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Third Order on Reconsideration*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Third Order on Reconsideration* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

V. Ordering Clauses

48. Pursuant to sections 1, 4(i), 4(j), 201, 206–208 and 258 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201, 206–208 and 258 and §§ 1.421 and 1.429 of the Commission's rules, 47 CFR 1.421 and 1.429, that the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking* in CC Docket No. 94–129 IS ADOPTED, and that part 64 of the Commission's rules, 47 CFR part 64, is amended as set forth in the Rule Changes. The requirements of this *Third Order on Reconsideration* shall become effective June 2, 2003. Sections 64.1120, 64.1150, 64.1160, 64.1170 and 64.1180 contain new or modified information collections that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

49. The collection of information contained herein is contingent upon approval by the Office of Management and Budget.

50. Pursuant to sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and section 1.429 of the Commission's rules, 47 CFR 1.429, that the petition for partial stay, filed by VoiceLog, LLC, *is denied* AS MOOT.

51. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules, 47 CFR 1.429, that the petition for reconsideration, filed by VoiceLog, LLC, *is granted in part and denied in part*, to the extent indicated herein.

52. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules, 47 CFR 1.429, that the petition for reconsideration, filed by the Rural LECs *is denied*.

53. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules 47 CFR 1.429, that the petition for reconsideration, filed by NTCA, *is denied*.

54. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules,

47 CFR 1.429, that the petition for reconsideration, filed by SBC, *is granted in part and denied in part*, to the extent indicated herein.

55. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules, 47 CFR 1.429, that the petition for reconsideration, filed by AT&T on April 2, 2001, *is granted in part and denied in part*, to the extent indicated herein, and that the petition for reconsideration, filed by AT&T on March 18, 1999, *is denied*.

56. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules, 47 CFR 1.429, that the petitions for reconsideration, filed by WorldCom on April 2, 2001 and September 5, 2000, *are granted in part and denied in part*, to the extent indicated herein.

57. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules, 47 CFR 1.429, that the petitions for reconsideration, filed by Sprint on April 2, 2001, and September 5, 2000, *are granted in part and denied in part*, to the extent indicated herein, and the petition for reconsideration, filed by Sprint on March 18, 1999, *is denied*.

58. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Shall Send a copy of this *Third Report and Order and Second Further Notice of Proposed Rulemaking* in CC Docket No. 94–129, including the Initial Regulatory Flexibility Analysis and the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons discussed in the preamble, part 64 of the Commission's Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. The heading of Subpart K is revised to read as follows:

Subpart K—Changes in Preferred Telecommunications Service Providers

* * * * *

■ 3. Section 64.1120 is amended by revising the paragraph (c)(3)(iii) to read as follows:

§ 64.1120 Verification of orders for telecommunications service.

* * * * *

(c) * * *

(3) * * *

(iii) *Requirements for content and format of third party verification.* All third party verification methods shall elicit, at a minimum, the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the carrier change; the names of the carriers affected by the change (not including the name of the displaced carrier); the telephone numbers to be switched; and the types of service involved. Third party verifiers may not market the carrier's services by providing additional information, including information regarding preferred carrier freeze procedures.

* * * * *

■ 4. Section 64.1130 is amended by revising paragraph (j) to read as follows:

§ 64.1130 Letter of agency form and content.

* * * * *

(j) A telecommunications carrier shall submit a preferred carrier change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency. However, letters of agency for multi-line and/or multi-location business customers that have entered into negotiated agreements with carriers to add presubscribed lines to their business locations during the course of a term agreement shall be valid for the period specified in the term agreement.

■ 5. Section 64.1150 is amended by revising paragraph (b) to read as follows:

§ 64.1150 Procedures for the resolution of unauthorized changes in preferred carriers.

* * * * *

(b) *Referral of Complaint.* Any carrier, executing, authorized, or allegedly unauthorized, that is informed by a subscriber or an executing carrier of an unauthorized carrier change shall direct that subscriber either to the state commission or, where the state commission has not opted to administer these rules, to the Federal Communications Commission's Consumer & Governmental Affairs Bureau, for resolution of the complaint. Carriers shall also inform the subscriber that he or she may contact and seek resolution from the alleged unauthorized carrier and, in addition, may contact the authorized carrier.

* * * * *

■ 6. Section 64.1160 is amended by adding paragraph (g) to read as follows:

§ 64.1160 Absolution procedures where the subscriber has not paid charges.

* * * * *

(g) When a LEC has assigned a subscriber to a carrier without authorization, and where the subscriber has not paid the unauthorized charges, the LEC shall switch the subscriber to the desired carrier at no cost to the subscriber, and shall also secure the removal of the unauthorized charges from the subscriber's bill in accordance with the procedures specified in paragraphs (a) through (f) of this section.

■ 7. Section 64.1170 is amended by adding paragraph (g) to read as follows:

§ 64.1170 Reimbursement procedures where the subscriber has paid charges.

* * * * *

(g) When a LEC has assigned a subscriber to a non-affiliated carrier without authorization, and when a subscriber has paid the non-affiliated carrier the charges for the billed service, the LEC shall reimburse the subscriber for all charges paid by the subscriber to the unauthorized carrier and shall switch the subscriber to the desired carrier at no cost to the subscriber. When a LEC makes an unauthorized carrier change to an affiliated carrier, and when the customer has paid the charges, the LEC must pay to the authorized carrier 150% of the amounts collected from the subscriber in accordance with paragraphs (a) through (f) of this section.

§ 64.1180 [Removed]

■ 8. Section 64.1180 is removed.

[FR Doc. 03–9120 Filed 4–17–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030227050–3082–02; I.D. 020603D]

RIN 0648–AQ34

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; 2003 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; final specifications.

SUMMARY: NMFS issues final specifications for the 2003 spiny dogfish fishery. This final rule implements a commercial quota and possession limits for the 2003 fishing year to address overfishing of the spiny dogfish resource. The intent of this action is to comply with implementing regulations for the Fishery Management Plan (FMP), which require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of this resource.

DATES: The 2003 final specifications are effective from May 1, 2003, through April 30, 2004.

ADDRESSES: Copies of supporting documents used by the Spiny Dogfish Monitoring Committee; the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA) contained within the RIR, and the Environmental Assessment (EA) are available from the Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, (978)281–9259, fax (978)281–9135, e-mail *Eric.Dolin@Noaa.gov*.

SUPPLEMENTARY INFORMATION: A proposed rule for this action was published in the **Federal Register** on March 10, 2003, (68 FR 11346). The comment period closed on March 25, 2003.

Background

The spiny dogfish fishery is managed under an FMP developed jointly by the Mid-Atlantic Fishery Management Council and the New England Fishery Management Council (Councils). The implementing regulations for the dogfish fishery are found at 50 CFR part 648, subpart L.

Pursuant to 50 CFR 648.230, the Administrator, Northeast Region, NMFS, (Regional Administrator) implements measures for the 2003 fishing year to assure that the target fishing mortality rate (F), as specified in the FMP, is not exceeded. The target F and management measures (i.e., semi-annual commercial quota and possession limits) are summarized below. Detailed background information regarding the development of the proposed specifications for the 2003 spiny dogfish fishery was provided in the preamble to the proposed rule (68 FR 11346, March 10, 2003) and is not repeated here.

Annual Commercial Quota and Possession Limits

The FMP specifies a target F of 0.03 for 2003 to be attained through a commercial quota, and possibly other management measures. This final rule implements a commercial quota of 4 million lb (1.81 million kg) for the 2003 fishing year that is allocated on a semi-annual basis as follows: Quota Period 1 (May 1–October 31) is allocated 57.9 percent of the 4–million lb (1.81–million kg) quota, or 2,316,000 lbs (1,050,512 kg), and Quota Period 2 (November 1–April 30) is allocated 42.1 percent of the 4–million lb (1.81–million kg) quota, or 1,684,000 lbs (763,849 kg).

This final rule also maintains the existing possession limits of 600 lb (272 kg) and 300 lb (136 kg) for Quota Period 1 and Quota Period 2, respectively, to allow for the retention of spiny dogfish caught incidentally while fishing for other species throughout the entire fishing year.

Comments and Responses

One set of written comments was submitted during the comment period in response to the proposed rule. The comments were prepared by a group of environmental organizations, including The Ocean Conservancy, Natural Resources Defense Council, National Audubon Society, and Environmental Defense.

NMFS considered the organizations' comments in making the decision to issue this final rule.

Comment 1: The environmental organizations supported a quota of no more than the 4–million lb (1.81–million kg) commercial quota, despite urging NMFS to consider a commercial quota lower than 4 million lb (1.81–million kg) for the upcoming fishing season. They also supported the proposed possession limits and strongly opposed higher possession limits, which would result in a directed fishery and potentially derail rebuilding efforts.

Response: NMFS is implementing the 4–million lb (1.81–million kg) commercial quota and 600–lb (272–kg)/300–lb (136–kg) possession limits for Quota Period 1 and 2, respectively, consistent with the Monitoring Committee recommendation to maintain fishing mortality targets and rebuilding objectives of the FMP. The Monitoring Committee did not comment on a lower quota because the 4–million lb (1.81–million kg) commercial quota is consistent with the FMP's fishing mortality target. Any further reduction in landings would have to be considered in light of potential increased spiny dogfish discards.

Changes From the Proposed Rule

The preamble of the proposed rule referenced trip limits, when, in fact, this final rule implements possession limits--defined as the maximum amount that can be landed in any one 24–hr period (calendar day). In contrast, a trip limit is not tied to a specific time interval. Thus, having a trip limit as opposed to a possession limit could encourage a directed fishery consisting of multiple trips per day.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This action establishes annual quotas and maintains the current possession limits for the spiny dogfish fishery, which are used to control the harvest of spiny dogfish and to restrict landings when quotas are attained. This action must be taken immediately at the start of the 2003 fishing year on May 1, 2003, to conserve this resource. It would be inconsistent with the conservation goals of the FMP to delay implementation of the quota provisions because a hiatus in harvest restrictions represented by the quota would allow for an unrestricted harvest and, if spiny dogfish are congregated in areas where other species are being targeted, or targeted by some vessels, the Period 1 quota will quickly be attained. In the absence of a commercial quota, there would be no ability to close the fishery to prevent further increases in fishing mortality and potential deleterious effects to rebuilding efforts. In addition, because this final rule maintains measures implemented in the 2002 specifications, there is no requirement for participants to come into compliance with any new gear requirements. Therefore, the AA finds good cause under 5 U.S.C. 553(d)(3) to partially waive the 30–day

delayed effectiveness period for the implementation of the 2003 Federal spiny dogfish quota.

NMFS and the Mid-Atlantic Council prepared a FRFA for this action. The FRFA includes comments on the Initial Regulatory Flexibility Analysis (IRFA), the discussion and the responses contained in the preamble to this final rule, and a summary of the analyses prepared in support of this action. Copies of the analysis are available from the Regional Administrator (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that entire discussion is not repeated here. A summary of the FRFA follows:

The reason that action is being taken by the agency and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here. This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Public Comments

The single set of comments received on the measures contained in the proposed rule did not specifically reference the IRFA analyses of the expected impacts of the proposed possession limit levels on small entities.

Number of Small Entities

The small entities considered in the analysis include 280 vessels that have reported spiny dogfish landings to NMFS in 2001 (the most recent year for which there are vessel-specific data). In addition, there are vessels that are not subject to the Federal reporting requirements because they fish exclusively in state waters.

Furthermore, there are a large number of vessels that have been issued Federal spiny dogfish permits, but have not fished for spiny dogfish in recent years (a total of 2,825 vessels were issued the permit in 2001). Because these vessels have obtained spiny dogfish permits, it is presumed that these vessels are interested in the fishery but have chosen not to participate under the restrictive possession limits. If any of these vessels should choose to participate in the upcoming fishing year, they might experience revenue increases associated with landings of spiny dogfish, but those increases cannot be estimated because it is impossible to determine both the number of vessels that would participate and their fishing behavior (e.g., level of effort).

Minimizing Significant Economic Impact on Small Entities

This FRFA summary includes a discussion of minimizing significant economic impacts on small entities. The IRFA analyzed three alternatives: Alternative 1 is implemented by this action (commercial quota of 4 million lb (1.81 million kg) and possession limits of 600 lb (272 kg) and 300 lb (136 kg) for Quota Period 1 and Quota Period 2, respectively); both Alternative 2 (commercial quota of 8.8 million lb (4 million kg) and possession limits of 7,000 lb (3,175 kg) and 5,000 lb (2,273 kg) for quota periods 1 and 2, respectively) and Alternative 3 (no quota or possession limits) would have a lower economic impact on small entities, but neither meets the conservation objectives of the FMP. Alternatives 2 and 3 could not be implemented without amending the FMP to modify the F target specified in the rebuilding program.

The FMP determined that the spiny dogfish stock could not support a directed fishery as would be the case under Alternatives 2 and 3. In the absence of a directed fishery, long-term profitability and solvency issues cannot be computed with a great degree of confidence. The information necessary to perform a profitability assessment is not available. Therefore, we have used changes in gross revenues in lieu of profitability. The potential changes in 2003 revenues under the 4–million lb (1.81–million kg) quota were evaluated relative to landings and revenues derived during 2001: 4.94 million lb (2.25 million kg) of landings, valued at $1,126,000. The analysis is based on the last full fishing year of landings data for 280 vessels. The reduction in gross revenues to the fishery as a whole for 2003 was estimated to be about $214,259, or about $765 per vessel, compared to fishing year 2001. It is only due to the landings for 2001 being in excess of the quota that this quota specification for spiny dogfish is expected to result in a reduction in revenues.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as the small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits issued for the spiny dogfish fishery. The guide and this final rule will be available upon request (see **ADDRESSES**).

Dated: April 15, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–9633 Filed 4–17–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 75
Friday, April 18, 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 Chapter I

Regulatory Analysis Guidelines: Proposed Criteria for the Treatment of Individual Requirements in a Regulatory Analysis

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is making available for public comment proposed criteria for the treatment of individual requirements in a regulatory analysis. The concern is that aggregating or ''bundling'' different requirements in a single analysis could potentially mask the inclusion of an inappropriate individual requirement. Therefore, the NRC proposes to modify its Regulatory Analysis Guidelines, NUREG/BR–0058, Rev. 3 by adding guidance to address this concern.

DATES: Submit comments on the proposed criteria by July 2, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays (Telephone 301–415–1678).

You may also provide comments via the NRC's interactive rulemaking Web site at *http://ruleforum.llnl.gov.* This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov*).

Certain documents related to these proposed criteria, including comments received and the ''Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission,'' NUREG/BR–0058, Rev. 3, July 2000, may be examined, and/or copied for a fee, at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The documents listed below are also accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html* under the following ADAMS accession numbers:

Regulatory Guide 1.174: ML003740133.

Regulatory Analysis Guidelines, NUREG/BR–0058, Rev. 3: ML003738939.

Regulations Handbook, NUREG/BR–0053, Rev. 5: ML011010183.

Commission paper, SECY–00–0198: ML003747699.

SRM regarding SECY–00–0198: ML010190405.

Commission paper, SECY–01–0134: ML011970363.

SRM regarding SECY–01–0134: ML012760353.

Commission paper, SECY–01–0162: ML012120024.

SRM regarding SECY–01–0162: ML013650390.

Commission paper, SECY–02–0225: ML023440333.

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: Brian Richter, Office of Nuclear Reactor Regulation, Washington, DC 20555–0001, telephone (301) 415–1978, e-mail *pdr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

In evaluating a proposed regulatory initiative, the NRC usually performs a regulatory analysis for the entire rule to determine whether or not it is justified. However, bundling different requirements in a single analysis could potentially mask the inclusion of an inappropriate individual requirement. In the case of a rule that provides a voluntary alternative to current requirements, the net benefit from the relaxation of one requirement could potentially support a second requirement that is not cost-justified. Similarly, in the case of other types of rules, including those subject to backfit analysis, the net benefit from one requirement could potentially support another requirement that is not cost-justified.

The issue of bundling different requirements in a single rulemaking has been raised by the Commission and the NRC staff in a number of contexts. In SECY–00–0198, ''Status Report on Study of Risk-Informed Changes to the Technical Requirements of 10 CFR part 50 (Option 3) and Recommendations on Risk-Informed Changes to 10 CFR 50.44 (Combustible Gas Control),'' dated September 14, 2000, the NRC staff discussed development of a voluntary risk-informed alternative rule. The NRC staff recommended not to allow selective implementation of parts of the voluntary alternative and not to apply the Backfit Rule. In a staff requirements memorandum (SRM) dated January 19, 2001, the Commission agreed that selective implementation of individual elements of a risk-informed alternative should not be permitted. The Commission also agreed that, since implementation of the risk-informed alternative version of 10 CFR 50.44 is voluntary, a backfit analysis of that version is not required. Furthermore, the Commission stated that:

> [A] disciplined, meaningful, and scrutable process needs to be in place to justify any new requirements that are added as a result of the development of risk-informed alternative versions of regulations. Just as any burden reduction must be demonstrated to be of little or no safety significance, any new requirement should be justifiable on some cost-benefit basis. The Commission challenges the staff to establish such a criterion in a manner that adds fairness and equity without adding significant complexity. The staff should develop a proposed resolution for this issue and provide it to the Commission for approval.

This issue once again surfaced in the fitness-for-duty rule. In SECY–01–0134, ''Final Rule Amending the Fitness-for-duty Rule,'' dated July 23, 2001, the NRC staff recommended withdrawing the OMB clearance request for a final rule and developing a new notice of proposed rulemaking. In an SRM dated

October 3, 2001, the Commission approved that recommendation. Furthermore, the Commission provided the following specific instructions on the backfit analysis:

> In the new fitness-for-duty rulemaking, the Commission will conduct an aggregate backfit analysis of the entire rulemaking. If there is a reasonable indication that a proposed change imposes costs disproportionate to the safety benefit attributable to that change, as part of the final rule package the Commission will perform an analysis of that proposed change in addition to the aggregate analysis of the entire rulemaking to determine whether this proposed change should be aggregated with the other proposed change for the purposes of the backfit analysis. That analysis will need to show that the individual change is integral to achieving the purpose of the rule, has costs that are justified in view of the benefits that would be provided or qualifies for one of the exceptions in 10 CFR 50.109(a)(4).

In SECY–01–0162, ''Staff Plans for Proceeding With the Risk-informed Alternative to the Standards for Combustible Gas Control Systems in Light-Water-Cooled Power Reactors in 10 CFR 50.44,'' dated August 23, 2001, the NRC staff proposed to identify any revisions that would be needed to existing guidance to put into place a disciplined, meaningful, and scrutable process for assessing any new requirements that could be added by a risk-informed alternative rule. Consistent with past practice and public expectations, the staff indicated that it planned to seek stakeholder input before reporting its recommendations to the Commission. In an SRM dated December 31, 2001, the Commission directed the staff to:

> * * * provide the Commission with recommendations for revising existing guidance in order to implement a disciplined, meaningful, and scrutable methodology for evaluating the value-impact of any new requirements that could be added by a risk-informed alternative rule.

Discussion

In order to obtain stakeholder input before reporting its recommendations to the Commission, the NRC staff published its preliminary proposed criteria on February 13, 2002, (67 FR 6663) and held a public meeting on March 21, 2002. A number of comments and suggestions were received at the meeting. (The complete Response to Comments document can be found as Attachment 3 to SECY–02–0225, which is accessible from ADAMS and at the NRC's Public Document Room as discussed above.) The three most significant issues raised were:

(1) There is concern about the provision that allows the analyst to rely on his or her judgment in determining which individual requirements should be analyzed separately.

In response to this concern, the NRC has expanded the guidance regarding the appropriate level of disaggregation in an analysis. Specifically, this guidance states that a decision on the level of disaggregation needs to be tempered by considerations of reasonableness and practicality, and that a more detailed disaggregation would only be appropriate if it produces substantively different alternatives with potentially meaningful implications on the cost-benefit results. While the NRC agrees that it often makes sense to divide a rule into discrete elements in performing regulatory analyses—and this is how the NRC generally performs these analyses—the NRC does not believe that there should be a general requirement for a separate analysis of each individual requirement of a rule. This could lead to unnecessary complexities. While the decision on the appropriate level of disaggregation is subjective, this decision—as with any regulatory decision—must undergo the agency's extensive internal review process. This typically includes a review by agency staff and management, the Committee to Review Generic Requirements, appropriate advisory committees, the Executive Director for Operations, and the Commission. In addition, the public may comment on the appropriate level of disaggregation in any public comment opportunity provided in accordance with standard NRC procedures for the development of generic requirements.

(2) There should be different guidance for different types of rules, rather than general guidance for any type of rule.

The NRC disagrees with this comment. The current Regulatory Analysis Guidelines consistently present broad policy positions that are designed to be applicable to all regulatory initiatives that are subject to regulatory analysis requirements. Further, the NRC believes that having different guidance for different types of rules may unnecessarily complicate the regulatory analysis process. In addition, it is possible that some rules may fall into more than one category (such as a rule that is both risk-informed and a backfit), in which case it would be unclear which criteria to use when analyzing a rule.

(3) For a risk-informed voluntary alternative to current regulations, an individual requirement should be integral to the purpose of the rule and cost-justified rather than integral to the purpose of the rule or cost-justified.

The NRC maintains that if an individual requirement is integral to the purpose of the rule, then that fact alone is a sufficient basis for its inclusion, and in fact, a decision on its inclusion or exclusion is not discretionary. However, the NRC finds that if a requirement is not deemed integral, it should be included if it is cost-justified. This alone is a sufficient basis because cost-benefit methodology directs one to select the alternative with the largest net benefit. This is clearly stated in OMB guidance and guidance contained elsewhere in NRC's Regulatory Analysis Guidelines. Clearly, if an individual requirement is cost-justified, its inclusion will result in a larger net benefit than an alternative that excludes the individual requirement. (Note, the proposed criteria no longer contain the phrase ''integral to the purpose of the rule,'' but rather use the word ''necessary'' and provide examples of when a requirement may be deemed necessary.)

Internal NRC comments also raised the question of how to perform analyses of NRC's periodic review and endorsement of new versions of the American Society of Mechanical Engineers (ASME) codes.[1] Such endorsements typically involve numerous individual code provisions that are currently evaluated in the aggregate. The concern here is that these proposed criteria for the treatment of individual requirements in a regulatory analysis may be interpreted as requiring the justification of each code change individually. In response to these comments, the NRC has added specific language which states that while these regulatory actions must be addressed in a regulatory analysis, it is usually not necessary to analyze the individual code provisions endorsed in these regulatory actions, except if these provisions or the action endorsing them constitute backfits. In these regulatory analyses, the major features of the codes should be considered, then aggregated to produce estimates of the overall burdens and benefits in order to determine if the regulatory action is justified. If there are some aspects of these regulatory actions that are backfits, these must be addressed and justified individually (and separately from the analysis of the

[1] The NRC's longstanding policy has been to incorporate new versions of the ASME codes into its regulations. ASME codes are updated on an annual basis to reflect improvements in technology and operating experience. The NRC reviews the updated ASME codes and conducts rulemakings to incorporate the latest versions by reference into 10 CFR 50.55a, subject to any modifications, limitations, or supplementations (*i.e.*, exceptions) that are considered necessary.

remainder of the action) as discussed in the Appendix to the proposed criteria.

The NRC has now developed proposed criteria regarding the treatment of individual requirements in a regulatory analysis and wishes to obtain input from interested members of the public. The NRC intends to review and analyze the comments, develop final criteria, and issue the final criteria if there are no significant changes due to public comments. However, if there are significant changes to the criteria, the staff will submit the recommended revised final criteria for the approval of the Commission.

These proposed criteria address only the treatment of individual requirements in a regulatory analysis, and if approved, the criteria will be added to the Regulatory Analysis Guidelines (NUREG/BR–0058, Rev. 3). These proposed revisions to the Guidelines are not intended to change the application of the Backfit Rule, 10 CFR 50.109. Analysts and decision makers must still apply the requirements of this rule in making analytical and regulatory decisions. In addressing the treatment of individual requirements in a regulatory analysis, these criteria are intended to provide guidance to staff and management in making decisions about which individual requirements may be bundled into a single regulatory analysis.

Proposed Criteria

In evaluating a proposed regulatory initiative, the NRC usually performs a regulatory analysis for the entire rule to determine whether or not it is justified. However, aggregating or ''bundling'' different requirements in a single analysis could potentially mask the inclusion of an inappropriate individual requirement. In the case of a rule that provides a voluntary alternative to current requirements, the net benefit from the relaxation of one requirement could potentially support a second requirement that is not cost-justified. Similarly, in the case of other types of rules, including those subject to backfit analysis,[2] the net benefit from one requirement could potentially support another requirement that is not cost-justified.[3]

Therefore, when analyzing and making decisions about regulatory initiatives that are composed of individual requirements, the NRC must determine whether or not it is appropriate to include them. Clearly, in certain instances, the inclusion of an individual requirement is necessary. This would be the case, for example, when the individual requirement is needed for the regulatory initiative to resolve the problems and concerns and meet the stated objectives[4] that are the focus of the regulatory initiative. Even though inclusion of individual requirements is necessary in this case, the analyst should obtain separate cost estimates for each requirement, to the extent practical, in deriving the total cost estimate presented for the aggregated requirements.

However, there will also be instances in which the individual requirement is not a necessary component of the regulatory initiative, and thus the NRC will have some discretion regarding its inclusion. In these circumstances, the NRC should follow the following guideline:

> If the individual requirement is related (*i.e.*, supportive but not necessary) to the stated objective of the regulatory initiative, it should be included only if its overall effect is to make the bundled regulatory requirement more cost-beneficial. This would involve a quantitative and/or qualitative evaluation of the costs and benefits of the regulatory initiative with and without the individual requirement included, and a direct comparison of those results.[5]

In applying this guideline, the NRC will need to separate out the discrete requirements in order to evaluate their effect on the cost-benefit results. In theory, each regulatory initiative could include several discretionary individual requirements and each of those discretionary requirements could be comprised of many discrete steps, in which each could be viewed as a distinct individual requirement. This raises the potential for a large number of iterative cost-benefit comparisons, with attendant analytical complexities. Thus, considerable care needs to be given to the level of disaggregation that is required. In general, a decision on the level of disaggregation needs to be tempered by considerations of reasonableness and practicality. For example, more detailed disaggregation is only appropriate if it produces substantively different alternatives with potentially meaningful implications on the cost-benefit results. Alternatively, individual elements that contribute little to the overall costs and benefits and are noncontroversial may not warrant much, if any, consideration. In general, it will not be necessary to provide additional documentation or analysis to explain how this determination is made, although such a finding can certainly be challenged at the public comment stage.[6] For further guidance, the analyst is referred to principles regarding the appropriate level of detail to be included in a regulatory analysis, as discussed in chapter 4 of the ''Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission.''

In some cases an individual requirement that is being considered for inclusion in a voluntary alternative to current regulations may be justifiable under the backfit criteria. In these cases the individual requirement is both cost-justified and provides a substantial increase in the overall protection of the public health and safety or the common defense and security. If so, the NRC should consider imposing the individual requirement as a backfit (where it would affect all plants to which it applies) rather than merely including it in a voluntary-alternative rule (where it would affect only those plants where the voluntary alternative is adopted).

A special case involves the NRC's periodic review and endorsement of voluntary consensus standards, such as new versions of the American Society of Mechanical Engineers (ASME) codes. These NRC endorsements can typically involve hundreds, if not thousands, of individual provisions. Thus, evaluating the benefits and costs of each individual provision in a regulatory analysis can be a monumental task. Further, the value gained by performing such an exercise appears limited. These voluntary

[2] ''The Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission,'' (NUREG/BR–0058) have been developed so that a regulatory analysis that conforms to the Guidelines will meet the requirements of the Backfit Rule and the provisions of the CRGR Charter.

[3] This discussion does not apply to backfits that the Commission determines qualify under one of the exceptions in 10 CFR 50.109(a)(4). Those types of backfits require a documented evaluation rather than a backfit analysis, and cost is not a consideration in deciding whether or not they are justified (though costs may be considered in determining how to achieve a certain level of protection).

[4] The stated objectives of the rule are those stated in the preamble (also known as the Statement of Considerations) of the rule.

[5] There may be circumstances in which the analyst considers including an individual requirement that is unrelated to the overall regulatory initiative. For example, an analyst may consider combining certain unrelated requirements as a way to eliminate duplicative rulemaking costs to the NRC and thereby increase regulatory efficiency. Under these circumstances, it would be appropriate to combine these discrete individual requirements if the overall effect is to make the regulatory initiative more cost-beneficial. In those instances in which the individual requirement is a backfit, the requirement must be addressed and justified as a backfit separately. These backfits are not to be included in the overall regulatory analysis of the remainder of the regulatory initiative.

[6] *See* NUREG/BR–0053, Revision 5, March 2001, ''U.S. Nuclear Regulatory Commission Regulations Handbook,'' section 7.9, for discussion of how to treat comments.

consensus standards tend to be non-controversial and have already undergone extensive external review and been endorsed by industry. Therefore, while regulatory actions endorsing these voluntary consensus standards must be addressed in a regulatory analysis, it is usually not necessary for the regulatory analysis to address the individual provisions of the voluntary consensus standards. The NRC believes this is appropriate for several reasons: (1) It has been longstanding NRC policy to incorporate later versions of the ASME Code into its regulations, and thus licensees know when receiving their operating licenses that such updating is part of the regulatory process; (2) endorsement of the ASME Code is consistent with the National Technology Transfer and Advancement Act, inasmuch as the NRC has determined that there are sound regulatory reasons for establishing regulatory requirements for design, maintenance, inservice inspection and inservice testing by rulemaking; and (3) these voluntary consensus standards undergo significant external review and discussion before being endorsed by the NRC. However, some aspects of these regulatory actions are backfits which must be addressed and justified individually. For example, NRC endorsement (incorporation by reference) of the ASME Boiler and Pressure Vessel Code (BPV) provisions on inservice inspection and inservice testing, and the ASME Operations and Maintenance (OM) Code, are not ordinarily considered backfits, because it has been the NRC's longstanding policy to incorporate later versions of the ASME codes into its regulations. However, under some circumstances NRC's endorsement of a later ASME BPV or OM Code is treated as a backfit. The application of the Backfit Rule to ASME code endorsements is discussed in the Appendix below. Aside from these backfits, these regulatory analyses should include consideration of the major features (*e.g.*, process changes, recordkeeping requirements) of the regulatory action which should then be aggregated to produce qualitative or quantitative estimates of the overall burdens and benefits in order to determine if the remainder of the action is justified.

Dated in Rockville, Maryland, this 14th day of April, 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Appendix—Guidance on Backfitting Related to ASME Codes

Section 50.55a requires nuclear power plant licensees to construct ASME *Boiler and Pressure Vessel Code* (BPV Code) Class 1, 2, and 3 components in accordance with the rules provided in section III, division 1, of the ASME BPV Code; inspect Class 1, 2, 3, Class MC, and Class CC components in accordance with the rules provided in section XI, division 1, of the ASME BPV Code; and test Class 1, 2, and 3 pumps and valves in accordance with the rules provided in the ASME *Code for Operation and Maintenance of Nuclear Power Plants* (OM Code). From time to time the NRC amends 10 CFR 50.55a to incorporate by reference later editions and addenda of: Section III, division 1, of the ASME BPV Code; section XI, division 1, of the ASME BPV Code; and the ASME OM Code.

Section A. Incorporation by Reference of Later Editions and Addenda of Section III, Division 1 of ASME BPV Code

Incorporation by reference of later editions and addenda of section III, division 1, of the ASME BPV Code is prospective in nature. The later editions and addenda do not affect a plant that has received a construction permit or an operating license or a design that has been approved, because the edition and addenda to be used in constructing a plant are, by rule, determined on the basis of the date of the construction permit, and are not changed thereafter, except voluntarily by the licensee. Thus, incorporation by reference of a later edition and addenda of section III, division 1, does not constitute a ''backfitting'' as defined in § 50.109(a)(1).

Section B. Incorporation by Reference of Later Editions and Addenda of Section XI, Division 1, of the ASME BPV and OM Codes

Incorporation by reference of later editions and addenda of section XI, division 1, of the ASME BPV Code and the ASME OM Code affect the ISI and IST programs of operating reactors. However, the Backfit Rule generally does not apply to incorporation by reference of later editions and addenda of the ASME BPV (section XI) and OM codes for the following reasons—

(1) The NRC's longstanding policy has been to incorporate later versions of the ASME codes into its regulations; thus licensees know when receiving their operating licenses that such updating is part of the regulatory process. This is reflected in § 50.55a which requires licensees to revise their ISI and IST programs every 120 months to the latest edition and addenda of section XI of the ASME BPV Code and the ASME OM Code incorporated by reference into § 50.55a that is in effect 12 months prior to the start of a new 120-month ISI and IST interval. Thus, when the NRC endorses a later version of a code, it is implementing this longstanding policy.

(2) ASME BPV and OM codes are national consensus standards developed by participants with broad and varied interests, in which all interested parties (including the NRC and utilities) participate. This consideration is consistent with both the intent and spirit of the Backfit Rule (*i.e.*, the NRC provides for the protection of the public health and safety, and does not unilaterally impose undue burden on applicants or licensees).

(3) Endorsement of these ASME codes is consistent with the National Technology Transfer and Advancement Act, inasmuch as the NRC has determined that there are sound regulatory reasons for establishing regulatory requirements for design, maintenance, inservice inspection and inservice testing by rulemaking.

Section C. Other Circumstances Where the NRC Does Not Apply the Backfit Rule to the Endorsement of a Later Code

Other circumstances where the NRC does not apply the Backfit Rule to the endorsement of a later code are as follows—

(1) When the NRC takes exception to a later ASME BPV or OM code provision, but merely retains the current existing requirement, prohibits the use of the later code provision, or limits the use of the later code provision, the Backfit Rule does not apply because the NRC is not imposing new requirements. However, the NRC provides the technical and/or policy bases for taking exceptions to the code in the Statement of Considerations for the rule.

(2) When an NRC exception relaxes an existing ASME BPV or OM code provision but does not prohibit a licensee from using the existing code provision.

Section D. Endorsement of Later ASME BPV or OM Codes That Are Considered Backfits

There are some circumstances where the NRC considers it appropriate to treat as a backfit the endorsement of a later ASME BPV or OM code—

(1) When the NRC endorses a later provision of the ASME BPV or OM code that takes a substantially different direction from the currently existing requirements, the action is treated as a backfit. An example was the NRC's initial endorsement of subsections IWE and IWL of section XI, which imposed containment inspection requirements on operating reactors for the first time. The final rule dated August 8, 1996 (61 FR 41303), incorporated by reference in § 50.55a the 1992 Edition with the 1992 Addenda of IWE and IWL of section XI to require that containments be routinely inspected to detect defects that could compromise a containment's structural integrity. This action expanded the scope of § 50.55a to include components that were not considered by the existing regulations to be within the scope of ISI. Since those requirements involved a substantially different direction, they were treated as backfits, and justified in accordance with the standards of 10 CFR 50.109.

(2) When the NRC requires implementation of later ASME BPV or OM code provision on an expedited basis, the action is treated as a backfit. This applies when implementation is required sooner than it would be required if the NRC simply endorsed the Code without any expedited language. An example was the

final rule dated September 22, 1999 (64 FR 51370), which incorporated by reference the 1989 Addenda through the 1996 Addenda of section III and section XI of the ASME BPV Code, and the 1995 Edition with the 1996 Addenda of the ASME OM Code. The final rule expedited the implementation of the 1995 Edition with the 1996 Addenda of Appendix VIII of section XI of the ASME BPV Code for qualification of personnel and procedures for performing UT examinations. The expedited implementation of Appendix VIII was considered a backfit because licensees were required to implement the new requirements in Appendix VIII prior to the next 120-month ISI program inspection interval update. Another example was the final rule dated August 6, 1992 (57 FR 34666), which incorporated by reference in § 50.55a the 1986 Addenda through the 1989 Edition of section III and section XI of the ASME BPV Code. The final rule added a requirement to expedite the implementation of the revised reactor vessel shell weld examinations in the 1989 Edition of section XI. Imposing these examinations was considered a backfit because licensees were required to implement the examinations prior to the next 120-month ISI program inspection interval update.

(3) When the NRC takes an exception to a ASME BPV or OM code provision and imposes a requirement that is substantially different from the current existing requirement as well as substantially different than the later code.

An example of this is that portion of the final rule dated September 19, 2002, in which the NRC adopted dissimilar metal piping weld ultrasonic (UT) examination coverage requirements.

[FR Doc. 03–9606 Filed 4–17–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Office of Counterintelligence

10 CFR Part 709

[Docket No. CN–03–RM–01]

RIN 1992–AA33

Polygraph Examination Regulations; Correction

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and opportunity for public comment; correction.

SUMMARY: This document corrects the preamble to a proposed rulemaking published in the **Federal Register** of April 14, 2003, regarding Polygraph Examination Regulations. This correction revises the web address where you may access this notice of proposed rulemaking and other supporting documentation.

FOR FURTHER INFORMATION CONTACT: Douglas Hinckley, U.S. Department of Energy, Office of Counterintelligence, CN–1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5901; or Lise Howe, U.S. Department of Energy, Office of General Counsel, GC–73, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2906.

Correction

In proposed rule FR Doc. 03–9009, appearing on page 17886, in the issue of Monday, April 14, 2003, the following correction should be made:

In the **ADDRESSES** section, the last sentence is corrected to the following: This notice of proposed rulemaking and supporting documentation is available on DOE's Internet Home Page at the following address: *www.so.doe.gov.*

Issued in Washington, DC on April 14, 2003.

Stephen W. Dillard,

Director, Office of Counterintelligence.

[FR Doc. 03–9631 Filed 4–17–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Tampa 03–060]

RIN 1625–AA00

Security Zones; Tampa Bay, Florida

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish security zones in the waters immediately adjacent to power facilities at Big Bend, and Weedon Island in Tampa Bay, 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: Comments and related material must reach the Coast Guard on or before June 17, 2003.

ADDRESSES: You may mail comments and related material to Marine Safety Office Tampa, U.S. Coast Guard, 155 Columbia Drive, Tampa, Florida 33606. The Operations Department of Marine Safety Office Tampa maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket [COTP Tampa 03–060] and will be available for inspection or copying at Coast Guard Marine Safety Office Tampa between 9 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:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Tampa 03–060], indicate the specific section of this document to which each comment applies, and give the reason for each comment. If you submit them by mail and would like to know that they reached the Marine Safety Office, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

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 proposed security zones would protect the public, ports, and waterways of the United States from potential subversive acts.

These proposed security zones are similar to the existing temporary security zones established for these waterfront facilities that will soon expire.

On March 7, 2003, the Captain of the Port issued a temporary rule titled ''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'' that was published in the **Federal Register** on March 25, 2003 (68 FR 14328; correction published April 9, 2003, 68 FR 17291). This temporary final rule created a security zone, from surface to bottom, extending 50 yards from the shore, seawalls and piers around the Big Bend Power Facility, prohibiting persons or vessels from entering the Big Bend Power Facility. The same temporary final rule created a security zone, from surface to bottom, extending 50 yards from the shore, seawalls and piers around the Weedon Island Power Facility, prohibiting persons or vessels from entering the suction and discharge canals at the power facility.

Discussion of Proposed Rule

The Coast Guard proposes to make the following security zones permanent:

(1) Big Bend, Tampa Bay, Florida. All waters of Tampa Bay, from surface to bottom, adjacent to the Big Bend Power Facility, and within an area bounded 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°48.02′ 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.

(2) 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 west along the shore to 27°51.89′ N, 082°36.10′ W then west to 27°51.89′ N, 082°36.14′ W closing off entrance to the canal.

Entry into or remaining within these zones would be prohibited unless authorized by the Coast Guard Captain of the Port, Tampa, Florida or that officer's designated representative. Persons desiring to transit the area of the security zone would have to contact the Captain of the Port at telephone number 727–824–7531 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels would need to comply with the instructions of the Captain of the Port or their designated representative.

Regulatory Evaluation

This proposed 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 (DHS).

We expect the economic impact of this proposed 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 proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact 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 proposed 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 proposed 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 proposed 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 proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed 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 affect children.

Indian Tribal Governments

This proposed 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 proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

2. Add § 165.764 to read as follows:

§ 165.764 Security Zones; Big Bend and Weedon Island Power Facilities, Tampa Bay, 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) *Big Bend, Tampa Bay, Florida.* All waters of Tampa Bay, from surface to bottom, adjacent to the Big Bend Power Facility, and within an area bounded 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°48.02′ 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.

(2) *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 west along the shore to 27°51.89′ N, 082°36.10′ W then west 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 that officer's designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 727–824–7531 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) **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: April 10, 2003.

James. M. Farley,

Captain, U.S. Coast Guard, Captain of The Port, Tampa, Florida.

[FR Doc. 03–9650 Filed 4–17–03; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1280

RIN 3095–AB17

NARA Facilities; Public Use

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA is proposing to modify its regulations for using NARA facilities. Our existing regulations specify conduct rules on NARA property, which is defined as property under the control of the Archivist. We are proposing to add threats as a prohibited behavior because of the risk to persons and property potentially posed by threats, and because of the increased number of email and telephone threats received in NARA facilities. We are also proposing to specify the types of corrective action NARA imposes for prohibited behavior. This proposed rule specifies the formal procedures that we follow when banning individuals from our facilities and adds appeal procedures for individuals who want to request a reconsideration of the determination. Last, we are proposing to apply these changes to NARA property and to NARA-occupied space in facilities that are under the control of other agencies.

DATES: Comments are due by June 17, 2003.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–837–2902. Electronic comments may be submitted through *Regulations.gov.* You may also comment via e-mail to *comments@nara.gov. See* the **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number (301) 837–2902.

SUPPLEMENTARY INFORMATION: NARA's existing regulations specify conduct rules on NARA property. NARA property is defined to mean property under the control of the Archivist of the United States (the National Archives Building, the National Archives Building at College Park, and the Presidential libraries). We are proposing to add threats as a prohibited behavior because of the risk to persons and property potentially posed by threats, and because of the increased number of e-mail and telephone threats received in NARA facilities.

This proposed rule also specifies the types of corrective action that NARA imposes for prohibited behavior. These include any or all of the following:

- Removal from the premises (removal for up to seven calendar days) and possible law enforcement notification;
- Long-term banning (in up to one-year increments that includes automatic revocation of research privileges);
- Arrest for trespass; and
- Any additional corrective action as prescribed by law.

This proposed rule also contains the formal procedures that we follow when banning individuals from our facilities and appeal procedures for those individuals who want to request a reconsideration of the decision.

In addition to property under the control of the Archivist of the United States, NARA also occupies facilities under the control of other agencies (the regional records services facilities, the Washington National Records Center in Suitland, MD, the National Personnel Records Center in St. Louis, Missouri, and the Office of the Federal Register in Washington, DC). In our existing regulations, individuals on property occupied by NARA but controlled by other agencies must follow the conduct rules in the General Services Administration's (GSA) regulations (41 CFR part 102–74, subpart C). Though this remains unchanged, we are proposing to make threats a prohibited behavior at NARA-occupied facilities. We also propose to add removal and banning from the NARA-occupied space in those facilities under the control of other agencies as types of corrective action that NARA imposes for threatening behavior.

Please submit e-mail comments within the body of your e-mail message or attach comments avoiding the use of any form of encryption. Please also include ''Attn: 3095–AB17'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your e-mail message, contact the Regulation Comment Desk at (301) 837–2902.

This proposed rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1280

Federal buildings and facilities.

For the reasons set forth in the preamble, NARA proposes to amend part 1280 of title 36, Code of Federal Regulations, chapter XII, as follows:

PART 1280—PUBLIC USE OF NARA FACILITIES

1. The authority citation for part 1280 is revised to read as follows:

Authority: 44 U.S.C. 2102 notes, 2104(a), 2112(a)(1)(A)(iii), 2903.

2. Amend § 1280.1 by revising paragraphs (b) and (c) and adding paragraph (d) as follows:

§ 1280.1 What is the purpose of this part?

* * * * *

(b) When you are using other NARA facilities, the General Services Administration (GSA) regulations, Conduct on Federal Property, at 41 CFR part 102–74, subpart C, apply to you. These facilities are the NARA regional records services facilities, the Washington National Records Center in Suitland, MD, the National Personnel Records Center in St. Louis, MO, and the Office of the Federal Register in Washington, DC. The rules in §§ 1280.32(l), 1280.34(a)(1) and (a)(2), and 1280.36 also apply to you. The rules in subpart B of this part also apply to you if you wish to film, take photographs, or make videotapes. The rules in subpart F of this part also apply to you if you wish to use the NARA-assigned conference rooms in those facilities.

(c) If you are using records in a NARA research room in a NARA facility, you must also follow the rules in 36 CFR part 1254. If you violate a rule or regulation in 36 CFR part 1254, you are subject to the types of corrective action set forth in that part, including revocation of research privileges.

(d) If you violate a rule or regulation in this part you are subject to, among other types of corrective action, removal and banning from the facility.

3. Amend § 1280.32 by adding paragraph (l) to read as follows:

§ 1280.32 What other behavior is not permitted?

* * * * *

(l) Threatening directly (*e.g.*, in-person communications or physical gestures) or indirectly (*e.g.*, via regular mail, electronic mail, or phone) any NARA employee, visitor, volunteer, contractor, other building occupants, or property.

4. Add § 1280.34 and § 1280.36 to subpart A to read as follows:

§ 1280.34 What are the types of corrective action NARA imposes for prohibited behavior?

(a) Individuals who violate the provisions of this part are subject to:

(1) Removal from the premises (removal for up to seven calendar days) and possible law enforcement notification;

(2) Banning from property owned or operated by NARA;

(3) Arrest for trespass; and

(4) Any additional types of corrective action prescribed by law.

(b) The regional administrator of the facility (or the director if so designated) has the authority to have the individual immediately removed and denied further access to the premises for up to seven calendar days. During this removal period, the Assistant Archivist for Administrative Services renders a decision on whether the individual should be banned from specific or all NARA facilities permanently or temporarily (in up to one-year increments). Long-term banning under this part includes automatic revocation of research privileges, notwithstanding the time periods set forth in 36 CFR 1254.20. Research privileges remain revoked until the ban is lifted, at which time an application for new privileges may be submitted.

(c) Upon written notification by the Assistant Archivist for Administrative Services, individuals may be banned from all NARA facilities. All NARA facilities will be notified of the banning of individuals.

§ 1280.36 May I file an appeal if I am banned from NARA facilities?

Yes, within 30 calendar days of receiving such notification, an individual may appeal the decision in writing. In the request, the individual must state the reasons for the appeal and mail it to the Deputy Archivist of the United States for reconsideration (address: National Archives and Records Administration (ND), 8601 Adelphi

Road, College Park, MD 20740–6001). The Deputy Archivist has 30 calendar days from receipt of an appeal to make a decision to rescind, modify, or uphold the ban. If the ban is upheld, further requests by the affected individual will not be acted upon if received prior to the expiration of a period of one year from the date of the last request for reconsideration. After one year has passed, a further request for reconsideration will be considered, and the Deputy Archivist will decide, within 30 calendar days of receiving the request, whether the ban remains in place or is rescinded. Notice of the decision will be provided in writing to the affected individual.

5. Revise § 1280.100 to read as follows:

§ 1280.100 What are the rules of conduct at NARA regional records services facilities?

While at any NARA regional records services facility, you are subject to all of the following:

(a) The GSA regulations, Conduct on Federal Property (41 CFR part 102–74, subpart C);

(b) The rules in subparts B and F of this part;

(c) Section 1280.1(b) through (d);

(d) Section 1280.32(l);

(e) Section 1280.34 (a)(1) and (a)(2); and

(f) Section 1280.36.

Dated: April 10, 2003.

John W. Carlin,

Archivist of the United States.

[FR Doc. 03–9585 Filed 4–17–03; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0043; FRL–7176–9]

Pesticide Tolerance Nomenclature Changes; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes minor revisions to the terminology of certain commodity terms listed under 40 CFR part 180, subpart C. EPA is taking this action to establish a uniform listing of commodity terms.

DATES: Comments, identified by docket ID number OPP–2002–0043, must be received on or before June 17, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9368; and e-mail address: *jamerson.hoyt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0043. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access an electronic copy of the commodity data base entitled *Food and Feed Commodity Vocabulary* go to: *http://www.epa.gov/pesticides/foodfeed/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is

restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked late. EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select search, and then key in docket ID number OPP–2002–0043. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0043. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0043.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0043. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

II. Background

A. What Action is the Agency Taking?

EPA's Office of Pesticide Programs (OPP) has developed a commodity vocabulary data base entitled *Food and Feed Commodity Vocabulary*. The data base was developed to consolidate all the major OPP commodity vocabularies into one standardized vocabulary. As a result, all future pesticide tolerances issued under 40 CFR part 180 will use the preferred commodity term as listed in the aforementioned data base. This revision process will establish a uniform presentation of existing commodity terms under 40 CFR part 180. This is the fourth in a series of documents revising the terminology of commodity terms listed under 40 CFR part 180. Two final rules, revising pesticide tolerance nomenclature, were published in the **Federal Register** on June 19, 2002 (67 FR 41802) (FRL–6835–2), and June 21, 2002 (67 FR 42392) (FRL–7180–1). In this document, EPA is reformatting certain tolerance entries that are not in the standard table format and, at the same time, is making changes to the terminology of the commodity terms in 40 CFR part 180 consistent with previous commodity terminology revisions. Refer to Unit II.A. in the two documents listed above for a description of the commodity term revisions.

III. Statutory and Executive Order Reviews

This document proposes technical amendments to the Code of Federal Regulations which have no substantive impact on the underlying regulations, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical amendment is not a ''significant regulatory action'' subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045,

entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental organizations. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action proposes technical amendments to the Code of Federal Regulations which have no substantive impact on the underlying regulations. This technical amendment will not have any negative economic impact on any entities, including small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR part 180

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

Dated: April 9, 2003.

James Jones,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180, subpart C is proposed to be amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.113 is revised to read as follows:

§ 180.113 Allethrin (allyl homolog of cinerin I); tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide allethrin (allyl homolog of cinerin I) in or on the following food commodities:

Commodity	Parts per million
Apple, postharvest	4
Barley, grain, postharvest	2
Blackberry, postharvest	4
Blueberry, postharvest	4
Boysenberry, postharvest	4
Cherry, postharvest	4
Corn, grain, postharvest	2
Crabapple, postharvest	4
Currant, postharvest	4
Dewberry, postharvest	4
Fig, postharvest	4
Gooseberry, postharvest	4
Grape, postharvest	4
Guava, postharvest	4
Huckleberry, postharvest	4
Loganberry, postharvest	4
Mango, postharvest	4
Muskmelon, postharvest	4
Oat, grain, postharvest	2
Orange, postharvest	4
Peach, postharvest	4
Pear, postharvest	4
Pineapple, postharvest	4
Plum, postharvest	4
Plum, prune, fresh, postharvest	4
Raspberry, postharvest	4
Rye, grain, postharvest	2
Sorghum, grain, grain, postharvest	2
Tomato, postharvest	4
Wheat, grain, postharvest	2

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

3. Section 180.116 is revised to read as follows:

§ 180.116 Ziram; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide ziram (zinc dimethyldithiocarbamate), calculated as zinc ethylenebisdithiocarbamate, in or on the following food commodities:

Commodity	Parts per million
Almond	0.1
Apple	7[1]
Apricot	7[1]

Commodity	Parts per million
Bean	7[1]
Beet, garden, roots	7[1]
Beet, garden, tops	7[1]
Blackberry	7[1]
Blueberry	7[1]
Boysenberry	7[1]
Broccoli	7[1]
Brussel sprouts	7[1]
Cabbage	7[1]
Carrot, roots	7[1]
Cauliflower	7[1]
Celery	7[1]
Cherry	7[1]
Collards	7[1]
Cranberry	7[1]
Cucumber	7[1]
Dewberry	7[1]
Eggplant	7[1]
Gooseberry	7[1]
Grape	7[1]
Huckleberry	7[1]
Kale	7[1]
Kohlrabi	7[1]
Lettuce	7[1]
Loganberry	7[1]
Melon	7[1]
Nectarine	7[1]
Onion	7[1]
Pea	7;[1]
Peach	7[1]
Peanut	7[1]
Pear	7[1]
Pecan	0.1
Pepper	7[1]
Pumpkin	7[1]
Quince	7[1]
Radish, roots	7[1]
Radish, tops	7[1]
Raspberry	7[1]
Rutabaga, roots	7[1]
Rutabaga, tops	7[1]
Spinach	7[1]
Squash	7[1]
Squash, summer	7[1]
Strawberry	7[1]
Tomato	7[1]
Turnip, greens	7[1]
Turnip, roots	7[1]
Youngberry	7[1]

[1]*See* footnote 1 to § 180.114.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

4. Section 180.133 is revised to read as follows:

§ 180.133 Lindane; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide lindane (gamma isomer of benzene hexachloride) in or on the following food commodities:

Commodity	Parts per million
Apple	1
Apricot	1
Asparagus	1
Avocado	1
Broccoli	1
Brussels sprouts	1
Cabbage	1
Cattle, fat	7
Cauliflower	1
Celery	1
Cherry	1
Collards	1
Cucumber	3
Eggplant	1
Goat, fat	7
Grape	1
Guava	1
Hog, fat	4
Horse, fat	7
Kale	1
Kohlrabi	1
Lettuce	3
Mango	1
Melon	3
Mushroom	3
Mustard greens	1
Nectarine	1
Okra	1
Onion, dry bulb	1
Peach	1
Pear	1
Pecan	0.01(N)
Pepper	1
Pineapple	1
Plum	1
Plum, prune, fresh	1
Pumpkin	3
Quince	1
Sheep, fat	7
Spinach	1
Squash	3
Squash, summer	3
Strawberry	1
Swiss chard	1
Tomato	3

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

5. Section 180.143 is revised to read as follows:

§ 180.143 Dipropyl isocinchomeronate; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide dipropyl isocinchomeronate, resulting from dermal application, in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.1(N)
Cattle, meat	0.1(N)
Cattle, meat by-products	0.1(N)
Goat, fat	0.1(N)
Goat, meat	0.1(N)
Goat, meat byproducts	0.1(N)
Hog, fat	0.1(N)
Hog, meat	0.1(N)
Hog, meat byproducts	0.1(N)
Horse, fat	0.1(N)
Horse, meat	0.1(N)
Horse, meat by-products	0.1(N)
Milk	0.004(N)
Sheep, fat	0.1(N)
Sheep, meat	0.1(N)
Sheep, meat by-products	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

6. Section 180.149 is revised to read as follows:

§ 180.149 Mineral oil; tolerances for residues.

(a) *General.* (1) For the purposes of this section, the insecticide mineral oil is defined as the refined petroleum fraction having the following characteristics:

(i) Minimum flashpoint of 300 °F.

(ii) Gravity of 27 to 34 by the American Petroleum Institute standard method.

(iii) Pour point of 30 °F maximum.

(iv) Color 2 maximum by standards of the American Society for Testing Materials.

(v) Boiling point between 480 °F and 960 °F.

(vi) Viscosity at 100 °F of 100 to 200 seconds Saybolt.

(vii) Unsulfonated residue of 90 percent minimum.

(viii) No sulfur compounds according to the United States Pharmacopeia test under Liquid Petrolatum.

(2) Tolerances for residues of mineral oil as specified in paragraph (a)(1) of this section are established in or on the following food commodities:

Commodity	Parts per million
Corn, grain, postharvest	200
Sorghum, grain, grain, postharvest	200

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

7. Section 180.179 is revised to read as follows:

§ 180.179 Tartar emetic; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide tartar emetic, calculated as combined antimony trioxide, in or on the following food commodities:

Commodity	Parts per million
Fruit, citrus	3.5
Grape	3.5
Onion	3.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

8. Section 180.180 is revised to read as follows:

§ 180.180 Orthoarsenic acid; tolerance for residues.

(a) *General.* A tolerance that expires on July 1, 1995, for combined As_2O_3 is established for residues of the defoliant orthoarsenic acid in or on the following food commodity:

Commodity	Parts per million
Cotton, undelinted seed	4

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

9. Section 180.202 is revised to read as follows:

§ 180.202 p-Chlorophenoxyacetic acid; tolerances for residues.

(a) *General.* (1) A tolerance is established for combined residues of the plant regulator *p*-chlorophenoxyacetic acid and its metabolite *p*-chlorophenol in or on the following food commodity:

Commodity	Parts per million
Tomato	0.05

(2) A tolerance is established for combined residues of the plant regulator *p*-chlorophenoxyacetic acid and its metabolite *p*-chlorophenol to inhibit embryonic root development in or on the following food commodity:

Commodity	Parts per million
Bean, mung, sprouts	2

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

10. Section 180.208 is revised to read as follows:

§ 180.208 N-Butyl-N-ethyl-α·α·α-trifluoro-2,6-dinitro-p-toluidine; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide *N*-butyl-*N*-ethyl-α·α·α-trifluoro-2,6-dinitro-*p*-toluidine in or on the following food commodities:

Commodity	Parts per million
Alfalfa, forage	0.05(N)
Alfalfa, hay	0.05(N)
Clover, forage	0.05(N)
Clover, hay	0.05(N)
Lettuce	0.05(N)
Peanut	0.05(N)
Trefoil, birdsfoot, forage	0.05(N)
Trefoil, birdsfoot, hay	0.05(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

11. Section 180.210 is revised to read as follows:

§ 180.210 Bromacil; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide bromacil (5-bromo-3-*sec*-butyl-6-methyluracil) in or on the following food commodities:

Commodity	Parts per million
Fruit, citrus	0.1
Pineapple	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

12. Section 180.212 is revised to read as follows:

§ 180.212 S-Ethyl cyclohexylethylthiocarbamate; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide *S*-ethyl cyclohexylethylthiocarbamate in or on the following food commodities:

Commodity	Parts per million
Beet, garden, roots	0.05(N)
Beet, garden, tops	0.05(N)
Beet, sugar, roots	0.05(N)
Beet, sugar, tops	0.05(N)
Spinach	0.05(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

13. Section 180.228 is revised to read as follows:

§ 180.228 S-Ethyl hexahydro-1H-azepine-1-carbothioate; tolerances for residues.

(a) *General.* Tolerances are established for the herbicide *S*-ethyl hexahydro-1*1H*-azepine-1-carbothioate in or on the following food commodities:

Commodity	Parts per million
Rice, grain	0.1(N)
Rice, straw	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

14. Section 180.232 is revised to read as follows:

§ 180.232 Butylate; tolerances for residues.

(a) *General.* Tolerances are established for the herbicide butylate in or on the following food commodities:

Commodity	Parts per million
Corn, field, forage	0.1
Corn, field, grain	0.1
Corn, field, stover	0.1
Corn, pop, forage	0.1
Corn, pop, grain	0.1
Corn, sweet, forage	0.1
Corn, sweet, kernel, plus cob with husks removed	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

15. Section 180.238 is revised to read as follows:

§ 180.238 S-Propyl butylethylthiocarbamate; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide *S*-propyl butylethylthiocarbamate in or on the following food commodities:

Commodity	Parts per million
Beet, sugar, roots	0.1(N)
Beet, sugar, tops	0.1(N)
Tomato	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

16. Section 180.241 is revised to read as follows:

§ 180.241 S-(O,O-Diisopropyl phosphorodithioate) of N-(2-mercaptoethyl) benzenesulfonamide; tolerances for residues.

(a) *General.* Tolerances are established for residues of S-(O,O-diisopropyl phosphorodithioate) of N-(2-mercaptoethyl benzenesulfonamide in or on the following food commodities:

Commodity	Parts per million
Carrot, roots	0.1(N)
Cucurbits	0.1(N)
Onion, dry bulb	0.1(N)
Vegetable, fruiting	0.1(N)
Vegetable, leafy	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

17. Section 180.245 is revised to read as follows:

§ 180.245 Streptomycin; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide streptomycin in or on the following food commodities:

Commodity	Parts per million
Celery	0.25
Fruit, pome	0.25
Pepper	0.25
Potato, from treatment of seed pieces	0.25
Tomato, from treatment of the seedling plants before transplanting	0.25

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

18. Section 180.257 is revised to read as follows:

§ 180.257 Chloroneb; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide chloroneb (1,4-dichloro-2,5-dimethoxybenzene) and its metabolite 2,5-dichloro-4-methoxyphenol (calculated as chloroneb) in or on the following food commodities:

Commodity	Parts per million
Bean	0.1(N)
Bean, forage	2
Beet, sugar, roots	0.1(N)
Beet, sugar, tops	0.1(N)
Cattle, fat	0.2
Cattle, meat	0.2
Cattle, meat by-products	0.2
Cotton, forage	2
Cotton, undelinted seed	0.1(N)
Goat, fat	0.2
Goat, meat	0.2
Goat, meat byproducts	0.2
Hog, fat	0.2
Hog, meat	0.2
Hog, meat byproducts	0.2
Horse, fat	0.2
Horse, meat	0.2
Horse, meat by-products	0.2
Milk	0.05(N)
Sheep, fat	0.2
Sheep, meat	0.2
Sheep, meat by-products	0.2
Soybean	0.1(N)
Soybean, forage	2

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

19. Section 180.288 is revised to read as follows:

§ 180.288 2-(Thiocyanomethylthio)benzothiazole; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide 2-(thiocyanomethylthio)benzothiazole in or on the following food commodities:

Commodity	Parts per million
Barley, grain	0.1(N)
Barley, straw	0.1(N)
Beet, sugar, roots	0.1(N)
Beet, sugar, tops	0.1(N)
Corn, grain	0.1(N)
Corn, forage	0.1(N)
Corn, stover	0.1(N)
Cotton, forage	0.1(N)
Cotton, undelinted seed	0.1(N)
Oat, forage	0.1(N)
Oat, grain	0.1(N)
Oat, hay	0.1(N)
Oat, straw	0.1(N)
Rice, grain	0.1(N)
Rice, straw	0.1(N)
Safflower, seed	0.1(N)
Sorghum, grain, forage	0.1(N)
Sorghum, grain, grain	0.1(N)
Sorghum, grain, stover	0.1(N)
Wheat, forage	0.1(N)
Wheat, grain	0.1(N)
Wheat, hay	0.1(N)
Wheat, straw	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

20. Section 180.309 is revised to read as follows:

§ 180.309 α-Naphthaleneacetamide; tolerances for residues.

(a) *General.* Tolerances are established for combined negligible residues of the plant regulator α-naphthaleneacetamide and its metabolite α-naphthaleneacetic acid (calculated as α-naphthaleneacetic acid) in or on the following food commodities:

Commodity	Parts per million
Apple	0.1
Pear	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

21. Section 180.311 is revised to read as follows:

§ 180.311 Cacodylic acid; tolerances for residues.

(a) *General.* Tolerances are established for residues of the defoliant cacodylic acid (dimethylarsinic acid), expressed as As_2O_3, in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.7
Cattle, kidney	1.4
Cattle, liver	1.4
Cattle, meat	0.7
Cattle, meat by-products, except kidney	0.7
Cattle, meat by-products, except liver	0.7

Commodity	Parts per million
Cotton, undelinted seed	2.8

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

22. Section 180.312 is revised to read as follows:

§ 180.312 4-Aminopyridine; tolerances for residues.

(a) *General.* Tolerances are established for the bird repellent 4-aminopyridine in or on the following food commodities:

Commodity	Parts per million
Corn, forage	0.1(N)
Corn, field, grain	0.1(N)
Corn, pop, grain	0.1(N)
Corn, stover	0.1(N)
Corn, sweet, kernels plus cob with husks removed	0.1(N)
Sunflower, seed	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

23. Section 180.316 is revised to read as follows:

§ 180.316 Pyrazon; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the herbicide pyrazon (5-amino-4-chloro-2-phenyl-3(2H)-pyridazinone) and its metabolites (calculated as pyrazon) in or on the following food commodities:

Commodity	Parts per million
Beet, garden, roots	0.1(N)
Beet, garden, tops	1
Beet, sugar, roots	0.1(N)
Beet, sugar, tops	1
Milk	0.01(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

24. Section 180.318 is revised to read as follows:

§ 180.318 4-(2-Methyl-4-chlorophenoxy) butyric acid; tolerance for residues.

(a) *General.* A tolerance is established for the herbicide 4-(2-methyl-4-chlorophenoxy) butyric acid in or on the following food commodity:

Commodity	Parts per million
Pea	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

25. Section 180.344 is revised to read as follows:

§ 180.344 4,6-Dinitro-o-cresol and its sodium salt; tolerance for residues.

(a) *General.* A tolerance is established for residues of the plant regulator 4,6-dinitro-*o*-cresol and its sodium salt, from application to apple trees at the blossom stage as a fruit-thinning agent, in or on the following food commodity:

Commodity	Parts per million
Apple	0.02(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

26. Section 180.360 is revised to read as follows:

§ 180.360 Asulam; tolerance for residues.

(a) *General.* A tolerance is established for residues of the herbicide asulam (methyl sulfanilylcarbamate) in or on the following food commodity:

Commodity	Parts per million
Sugarcane, cane	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

27. Section 180.488 is revised to read as follows:

§ 180.488 Hexaconazole; tolerance for residues.

(a) *General.* A tolerance is established for residues of the fungicide hexaconazole, [alpha-butyl-alpha-(2,4-dichlorophenyl)-1*H*-1,2,4-triazole-1-ethanol], in or on the following food commodity:

Commodity	Parts per million
Banana[1]	0.7

[1]There are no U.S. registrations as of June 30, 1999.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 03–9484 Filed 4–17–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129, FCC 03–42]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on whether to revise, clarify, or adopt any additional rules in order to more effectively carry out Congress' directives in the Communications Act to combat unauthorized changes in a subscriber's telecommunications providers (also known as ''slamming''). In order to maximize the accuracy and efficiency for consumers, carriers, and the Commission, additional minimum requirements for third party verification may be necessary. It is the Commission's experience that additional requirements may address issues that the Commission has seen repeatedly in our enforcement of the slamming rules. Therefore, we seek comment on whether third party verifiers should state the date during the taped verification process. We also seek comment on whether the verifier should be required to make additional statements and whether these additional statements would serve to lessen or heighten customer confusion.

DATES: Comments are due June 2, 2003 and reply comments are due June 17, 2003. Written comments by the public on the proposed information collections are due June 2, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection on or before June 17, 2003.

ADDRESSES: Parties who choose to file comment by paper must file an original and four copies to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications

Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at *www.fcc.gov/e-file/ecfs.html*. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson at 202–418–2512, Consumer & Governmental Affairs Bureau. For additional information concerning the information collection(s) contained in this document, contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking (NPRM) in CC Docket No. 94–129, FCC 03–42, released March 17, 2003, that is contained in the *Third Order on Reconsideration*. This NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection(s) contained in this proceeding. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

Paperwork Reduction Act: This NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment of the proposed information collection(s) contained in this proceeding. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the collection techniques or other forms of information technology.

OMB Control Number: 3060–0787.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996. Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers.

Form Number: N/A.

Type of Review: New collection.

Number of Respondents: 1772.

Estimated Time Per Response: .010 hours.

Frequency of Response: On occasion.

Total Annual Burden: 17.72 hours.

Total Annual Costs: $163.91.

Needs and Uses: Based on the Commission's experience the need for additional minimum requirements for third party verifications may be necessary in order to maximize their accuracy and efficiency for consumers, carriers, and the Commission.

Synopsis of NPRM

1. *Background*. As noted, in the *Third Report and Order*, the Commission declined to mandate specific language to be used in third party verification calls. However, in order to eliminate uncertainty as to what constitutes necessary and acceptable practices, the Commission adopted minimum content requirements for third party verification. The Commission stated that minimum requirements for such calls would provide useful guidance to the third party verifiers and carriers without locking carriers into using a set script. In addition, the Commission stated that the requirements would also permit more streamlined enforcement by helping the Commission to determine the adequacy of steps taken by independent third parties in the verification process. Accordingly, the Commission concluded that scripts for third party verifications should elicit, at a minimum, the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved (*i.e.*, local, in-state toll, out-of-state toll, or international service). The Commission noted that these content requirements do not differ in substance from the rules regarding LOAs.

2. In addition, the Commission found that the third party verification must be conducted in the same language that was used in the underlying sales transaction, and that the entire third party verification transaction must be recorded. The Commission also reiterated that, consistent with its rules regarding verifications generally, submitting carriers must maintain and preserve the recordings for a minimum period of two years after obtaining such verification. The Commission observed that, if a slamming dispute arises, a recorded verification will help determine whether the subscriber was simply seeking information or was in fact agreeing to change carriers and, if so, which service(s) the subscriber had agreed to change.

3. *Discussion*. Based on our experience since the effective date of the *Third Report and Order*, we seek comment on the need for additional minimum requirements for third party verification calls in order to maximize their accuracy and efficiency for consumers, carriers, and the Commission. These additional possible requirements address issues we have seen repeatedly in our enforcement of the slamming liability rules. First, we seek comment on whether third party verifiers should state the date during the taped verification process. Through our slamming enforcement efforts, we have become aware of situations in which, for example, a carrier may have obtained a valid authorization for a past carrier change, but the customer has since switched away from the carrier and now alleges that he or she was switched back to that carrier without authorization. Without a clearly articulated date on the verification tapes, the carrier could use the former verification tape to defend itself against the subsequent unauthorized change.

4. Next, we seek comment on whether the verifier should explicitly state that, if the customer has additional questions for the carrier's sales representative regarding the carrier change after verification has begun, the verification will be terminated, and further verification proceedings will not be carried out until after the customer has finished speaking with the sales representative. We note that, according to our rules, final verification cannot be obtained until after the carrier's sales representative has ceased speaking to the customer. Accordingly, we seek comment as to whether such a requirement would lessen possible customer confusion in situations in which a verification is terminated because the customer seeks further discussions with the carrier's sales agent. We also seek comment on whether the verifier should convey to the customer that the carrier change can

be effectuated without any further contact with the customer once the verification has been completed in full. We have found that customers may not realize that a carrier cannot in most cases ''undo'' a PIC change after it has been submitted, even if the subscriber quickly requests cancellation of the change order.

5. We seek comment on whether verifiers should be required to make clear to a customer that he or she is not verifying an intention to retain existing service, but is in fact asking for a carrier change. We have observed instances in which, for example, carriers seeking to obtain customer authorization for a carrier change merely inform customers that they are consenting to an ''upgrade'' of the customers' service or to bill consolidation. We also note that it can be difficult to ascertain whether a subscriber has fully and knowingly provided an answer to each question posed by a third party verifier if some questions are presented as a group rather than individually. Accordingly, commenters should address whether each piece of information that a third party verifier must gather under our rules should be the subject of a separate and distinct third party verifier inquiry and subscriber response. Finally, we seek comment on whether, when verifying an interLATA service change, the verifier should specify that interLATA service encompasses both international and state-to-state calls, and whether a verifier should define the terms ''intraLATA toll'' and ''interLATA toll'' service. We have observed that carriers sometimes use differing terms for these services; for example, a carrier might refer to intraLATA service as ''short haul long distance, local toll, local long distance, or long distance calls within your state.'' Accordingly, we have received numerous complaints from consumers that assert they unknowingly gave up the flat rate for intraLATA service they paid to their LEC when consenting to a carrier change for different services.

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), as amended, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking (Second Further NPRM).* Written public comments are requested on this IRFA. Comments must be identified as responses to the *Second Further NPRM.* The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the Notice and the IRFA (or summaries thereof) will be published in the **Federal Register**.

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

2. Section 258 prohibits any telecommunications carrier from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service. This practice, known as ''slamming,'' distorts the telecommunications market by enabling companies that engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. In this *Order*, we address certain issues raised in petitions for reconsideration of the *Second Report and Order and Further Notice of Proposed Rulemaking*, the *First Order on Reconsideration*, and the *Third Report and Order.* This *Order* also contains a Second Further Notice of Proposed Rulemaking, in which we propose several modifications to our carrier change rules. Specifically, we seek comment on rule modifications with respect to third party verifications.

B. Legal Basis

3. The *Second Further Notice* is adopted pursuant to Sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C.151, 154(i), 154(j), and § 1.429 of the Commission's Rules, 47 CFR 1.429.

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

4.The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. Under the Small business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations.

5. The definition of ''small governmental jurisdiction'' is one with populations of fewer than 50,000. There are approximately 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

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

7. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 1,329 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, we estimate that the majority of providers of local exchange service are small entitles that may be affected by the rules and policies adopted herein.

8. *Competitive Local Exchange Carriers.* Neither the Commission nor

the SBA has developed a specific small business size standard for providers of competitive local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of competitive local exchange service are small entities that may be affected by the rules.

9. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a specific size standard for competitive access providers (CAPS). The closest applicable standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 532 CAPs or competitive local exchange carriers and 55 other local exchange carriers reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 competitive access providers and competitive local exchange carriers, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. Of the 55 other local exchange carriers, an estimated 53 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of small entity CAPS and the majority of other local exchange carriers may be affected by the rules.

10. *Local Resellers.* The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 134 companies reported that they were engaged in the provision of local resale services. Of these 134 companies, an estimated 131 have 1,500 or fewer employees and 3 have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers may be affected by the rules.

11. *Toll Resellers.* The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 576 companies reported that they were engaged in the provision of toll resale services. Of these 576 companies, an estimated 538 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that a majority of toll resellers may be affected by the rules.

12. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 229 carriers reported that their primary telecommunications service activity was the provision of interexchange services. Of these 229 carriers, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. Consequently, we estimate that a majority of IXCs may be affected by the rules.

13. *Operator Service Providers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 22 companies reported that they were engaged in the provision of operator services. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that a majority of local resellers may be affected by the rules.

14. *Prepaid Calling Card Providers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that a majority of prepaid calling providers may be affected by the rules.

15. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 42 carriers reported that they were engaged in the provision of ''Other Toll Services.'' Of these 42 carriers, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that a majority of ''Other Toll Carriers'' may be affected by the rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

16. As noted, we have sought comment on the need for additional minimum requirements for third party verification calls in order to maximize their accuracy and efficiency for consumers, carriers, and the Commission. These additional possible requirements address issues we have seen repeatedly in our enforcement of the slamming liability rules. We do not believe that adoption of any or all of the proposals would create the need for any additional professional skills beyond those already employed to comply with the current third party verification rules.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

18. *Third Party Verification.* The Commission is considering additional requirements which would address issues we have seen in the enforcement of our slamming rules, and we therefore seek comment on the need for additional minimum requirements for third party verification calls and of the impact of any additional requirements on small entities. We especially seek information addressing the possible financial impact on smaller carriers.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

19. None.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–9119 Filed 4–17–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 040703D]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that an application to issue EFPs to six longline and tub trawl vessels, submitted by the Maine Department of Marine Resources (Maine DMR), contains all the information required by the regulations governing exempted experimental fishing under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and, therefore, warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under these EFPs would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP) and is within the scope of earlier analyses of the impacts. However, further review and consultation may be necessary before a final determination is made to issue six EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs that would allow six commercial longline or tub trawl vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States.

Regulations under the Magnuson-Stevens Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this notification must be received at the appropriate address or fax number (*see* **ADDRESSES**) on or before May 5, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Maine Halibut EFP Proposal.'' Comments may also be sent via facsimile to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Draft 2003 Supplement to the Environmental Assessment (EA) Prepared for the 2002 Experimental Halibut Fishery in Groundfish Closed Areas in the Eastern Gulf of Maine are available from the Northeast Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Susan Chinn, Fishery Management Specialist, 978–281–9218.

SUPPLEMENTARY INFORMATION: NMFS announces that the Regional Administrator intends to issue EFPs to allow six federally permitted vessels to fish for, land, and possess Atlantic halibut (*Hippoglossus hippoglossus*) in excess of the allowable landing and possession limit specified at 50 CFR 648.86(c) within a portion of the Gulf of Maine Regulated Mesh Area (GOM RMA). The EFPs would also allow these vessels to possess temporarily Atlantic halibut less than the minimum size requirement of 36 inches (91.4 cm) specified at § 648.83(a)(1) for purposes of collecting scientific information. In addition, the EFPs would allow vessels access to GOM Rolling Closure Area IV.

Maine DMR submitted a proposal on December 1, 2002, to conduct an experimental Atlantic halibut fishery in a portion of the GOM RMA. The industry collaborative experiment involves Maine DMR, with consultation provided by the NMFS Northeast Fisheries Science Center (Center). The purpose of the experiment is to continue the collection of data on the distribution, relative abundance, migration, stock definition, mortality rates, stock size, yield, and other significant biological reference points of the Atlantic halibut resource to be used in the long-term management of the species. In addition, the experiment proposes to collect information on age and growth, size and sex composition, and rate and onset of sexual maturity. The proposed experiment is a continuation of experimental fisheries conducted by Maine DMR in 2000, 2001, and 2002.

Maine DMR proposed that the study would occur from April 1 through May 31, 2003, or for 60 consecutive days beginning from the actual start date, and would take place in a portion of the GOM RMA defined by the following coordinates:

Area Point	N. Latitude	W. Longitude
HAL 1	Mainland Maine Coastline	69° 00″
HAL 2	43o 12.3″	69°00″
HAL 3	43° 58.3″	67° 21.5″
HAL 4*	Mainland Maine Coastline and U.S./Canada Maritime Boundary	Mainland Maine Coastline and U.S./Canada Maritime Boundary

*Between points HAL 3 and HAL 4, the area follows the U.S./Canada maritime boundary.

A maximum of six traditional longline and tub trawl vessels would be authorized to participate in the experiment at any given time. These vessels would be limited to a maximum number of 700 hooks per boat, and would be restricted to using circle hooks no smaller than 14/0 in size. Each of the six participating vessels would also be limited to a total allowable catch (TAC) of 50 individual halibut, with no possession or landing limit prior to reaching this amount. Once this TAC is reached by an individual vessel, that vessel would be restricted to possessing and landing no more than four legal-sized halibut per day. The maximum number of Atlantic halibut that could be harvested as part of this study would be 500. The maximum harvest for both the 2000 and 2001 experimental fisheries was 1,080 halibut; for the 2002 study, it was reduced to 234 halibut.

Logbooks supplied by Maine DMR would be used to record information on length of all halibut caught, whether retained or released, time and place of all halibut caught, tag number (if applicable), amount of gear used, and bait type. In addition, species identification and length of all species caught as bycatch during the course of the study would be recorded. For all halibut that are retained, participants would be required to preserve stomachs, gonads, and any other biological samples (including scale and otolith samples) requested by scientists from Maine DMR and NMFS for further analyses. All halibut less than 36 inches (91.4 cm) total length would be measured, tagged and released. Only legal-sized halibut would be retained for commercial sale. Training in the procedures for collecting this information would be provided by Maine DMR or Center personnel. In addition, participants would be required to complete a training program in the tagging and release of halibut. Vessels may be required to carry onboard observers as requested by NMFS and Maine DMR. Maine DMR or Center personnel would train observers in the protocols of the experiment.

The 2002 experimental Atlantic halibut fishery took place with six vessels participating from April 1 - May 31, 2002, within the same study area as the proposed 2003 experimental fishery. Over the course of 60 days, 469 Atlantic halibut were caught, of which 234 were kept and 235 were tagged and released. Therefore, the experimental fishery attained the maximum allowable harvest of 234 halibut. Most of the kept halibut were sold for consumption, but 30 were sold live to the University of Maine for use as brood stock. Ten tagged fish were recaptured in 2002: seven from the 2000 experimental fishery, two from the 2001 season and one from the 2002 season. Otolith and gonad samples were taken from all fish retained, except for the 30 fish sold live to the University of Maine.

The 2001 experimental Atlantic halibut fishery took place from April 12–May 31, 2001, within the same study area. Although six vessels were permitted to fish in the 2001 experimental fishery, only four actively participated. Over the course of 50 days, 152 Atlantic halibut were caught, of which 126 were kept and 26 were tagged and released. Most of the kept halibut were sold for consumption, but 45 of the 126 kept halibut were sold live to the University of Maine for use as brood stock. Two of the fish that were caught were recaptured from the 2000 experimental fishery. One of the recaptured fish was re-released, while the other was sold live to the University of Maine. Otolith and gonad samples were taken from all fish retained, except for the 45 fish sold live to the University of Maine.

The 2000 experimental Atlantic halibut fishery took place from April 15 to June 15, 2000. Three vessels participated in this experimental fishery capturing 234 halibut, of which 162 were kept.

With an average weight of 47 lb (21 kg) per halibut, the 2000 experimental fishery landed 7,650 lb (3.5 metric tons (mt)) of halibut, approximately 32 percent of the 11–mt total Atlantic halibut landings from the GOM/Georges Bank (GB) management unit in 2000. Outside of the experimental fishery, vessels were (and continue to be) restricted to a trip limit of one halibut. The 2001 Atlantic halibut experimental fishery landed approximately 2.5 mt, 22 percent less than the 2000 experimental fishery's halibut landings. The 2002 Atlantic halibut experimental fishery landed 4.3 mt, or about 20 percent of the total GOM/GB halibut landings (22 mt) during 2002. Based on the past year's data, if the 2003 experimental fishery harvests the proposed maximum allowable take of 500 halibut, the 2003 landings will be approximately 20,276 lb (9.2 mt). In comparison, the halibut landings from the Canadian Scotian Shelf/Southern Grand Banks management unit totaled about 1,000 mt in 2001, with a total allowable catch of 1,150 mt for that unit in 2002.

Given that the Canadian halibut harvest is more than 100 times the proposed harvest for the 2003 experimental fishery, NMFS believes that the taking of 500 halibut will not significantly impact the halibut resource because halibut appear to be a transboundary resource. If the GOM/GB halibut population is discrete, the impacts of the proposed increase in total allowable harvest from 234 to 500 in the 2003 experimental fishery on the Atlantic halibut resource are unknown, but do not appear to exceed the impact of the U.S. trawl bycatch and Canadian fisheries. NMFS believes the potential negative biological impacts (which are not fully known) from the increased harvest by the experimental fishery would be outweighed by the biological benefits that could be obtained from the study. Furthermore, NMFS would closely monitor the catch rates of vessels participating in this experimental fishery. If NMFS determines that catch rates are declining, indicating a significant impact to the resource, it would have the authority to terminate the experimental fishery.

The EA prepared for the 2002 experimental fishery concluded that the activities conducted under the 2002 EFP were consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan and would have no negative environmental impacts including impacts to Essential Fish Habitat, marine mammals, and protected species. The draft 2003 Supplement to the 2002 EA makes a preliminary determination that the proposed experimental fishery to collect biological and ecological information on Atlantic halibut will not significantly affect the quality of the human environment.

Based on the results of the EFPs, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 14, 2003.

Dean Swanson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9636 Filed 4–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030320066–3066–01; I.D. 022103D]

RIN 0648–AQ78

Fisheries of the Exclusive Economic Zone Off Alaska; Delay of Full Retention and Utilization Requirements for Rock Sole and Yellowfin Sole

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 75 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This amendment would delay the effective date of requirements for 100-percent retention and utilization of rock sole and yellowfin sole from January 1, 2003, until June 1, 2004. The purpose of Amendment 75 is to provide the Council and the affected industry with additional time to develop and assess alternatives to address groundfish discards in the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI). An Initial Regulatory Flexibility Analysis (IRFA) was prepared to examine the effects of Amendment 75 on small entities. The purpose of this notice is to provide the affected public an expanded summary of the IRFA so that members of the public may provide more effectively comments on the effects of Amendment 75 on small entities.

DATES: Comments on the IRFA must be received by May 12, 2003.

ADDRESSES: Comments on the IRFA may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Hand delivery or courier delivery of comments may be sent to the NMFS, Alaska Region, 709 West 9th St., Room 453, Juneau, AK, 99801. Comments also may be sent via facsimile (fax) to (907) 586–7557. Comments will not be accepted if submitted via e-mail or the Internet. Copies of Amendment 75 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from NMFS at the above address, or by calling Lori Durall, Alaska Region, NMFS at (907) 586–7228. The EA/RIR/IRFA is also available online at: *http://www.fakr.noaa.gov/analyses/2003.htm*.

FOR FURTHER INFORMATION CONTACT: Sue Salveson, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The Council prepared an IRFA for Amendment 75 that describes the economic impacts this proposed amendment and implementing regulations, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the proposed rule to implement Amendment 75 (68 FR 15144, March 28, 2003). This proposed rule does not duplicate, overlap, or conflict with other Federal rules. No new reporting or recordkeeping requirements are contained in any of the alternatives considered for this action. A total of 176 small entities (all catcher vessels) and 34 large entities (6 catcher vessels, 24 head and gut catcher/processors, and 4 surimi catcher/processors) are active in the BSAI groundfish fisheries. Because individual vessel costs are not available for these vessels, individual vessel profitability could not be estimated. Therefore, changes in gross revenue of the 176 vessels are used as a proxy for changes in individual vessel profitability. Furthermore, assumptions are made that revenue losses and gains are shared equally among these vessels and that discards represent a displacement of revenue tonnage if hold space is limited. The delay in implementing IR/IU flatfish retention rules for rock sole and yellowfin sole in the BSAI will prevent decreases in the profitability of small vessels while having little impact on the large vessels that participate in these fisheries. A summary of the analysis follows:

The preferred alternative would delay implementation of IR/IU flatfish regulations in the BSAI fisheries through June 2004. The economic impact of the preferred alternative on individual vessels is expected to be minimal. It is expected to provide industry and management agencies an additional 17 months before implementation to develop measures that could meet bycatch reduction goals, while allowing the industry to continue to operate effectively. The Council and NMFS are currently analyzing alternative approaches to IR/IU flatfish regulations that could be implemented in June 2004. The alternatives currently under consideration for future action by the Council are designed to achieve the management objective of reducing bycatch in a less economically burdensome manner.

Alternative 1, which represents a 100 percent retention standard, could lead to decreases in gross revenue for the affected fisheries and could yield substantial decreases in gross revenue associated with rock sole in the Pacific cod fishery. Assuming hold space is limited, the additional flatfish retained would displace fish of higher value, thereby decreasing per trip revenues. Many of the catcher vessels may experience a problem with damaged non-flatfish, such as Pacific cod, by mixing rough-scaled flatfish and soft-fleshed roundfish in the hold. This problem may be avoided if flatfish are segregated in a separate hold. However, most catcher vessels are unlikely to be able to dedicate an entire hold to the relatively small amount of flatfish that are likely to be taken. Furthermore, it is generally reported that many (perhaps most) of these catcher vessels do not have the capacity to sort their catch at sea, under any circumstances.

Historical catches and discards of IR/IU flatfish by trawl catcher vessels are highest in the BSAI Pacific cod fishery, both in terms of volume and percent by weight of retained groundfish. During the 1992–2000 period, discards of rock sole and yellowfin sole were 12.6 percent of the total amount of groundfish retained. Over 75 percent of trawl catcher vessel gross revenue was generated from landings of pollock and 20 percent was generated in Pacific cod fisheries. Only 3 percent of trawl catcher vessel gross revenue was generated from landings of flatfish. Moreover, since 1998, flatfish have accounted for only 1 percent of total gross revenue. Clearly, pollock and Pacific cod are the mainstays of trawl catcher vessels, and because bottom trawling for pollock was prohibited in 1999, IR/IU flatfish regulations are likely to affect only those trawl catcher vessels that participate in Pacific cod fisheries.

Alternative 2 would allow some discards of the IR/IU flatfish species. The percent retention requirement would be set independently for each species and would range from 50 percent to 90 percent. The analysis of the effects of alternative retention requirements on catcher vessels shows that virtually 100 percent of the catch of rock sole and yellowfin sole is discarded in all the fisheries in which rock sole and yellowfin sole are caught. Consequently, any retention requirement for rock sole and yellowfin

sole would be expected to result in adverse economic and operational impacts. This measure can be interpreted as a displacement of revenue tonnage. A full retention requirement for rock sole would have the greatest effect, and this requirement would result in less than a five percent displacement in revenue tonnage for all catcher vessel classes.

Alternative 3 would delay implementation of IR/IU flatfish rules for up to 3 years. Delaying implementation will postpone the economic consequences discussed under Alternative 1 and will allow the benefits of the economic activity associated with the operation of these vessels to accrue to vessel operators for the period of the delay. A delay in implementation could also provide time for assessment of the potential for rationalization within the IR/IU flatfish fisheries. These fisheries are characterized by a ''race for fish'' mode of operation that exacerbates the economic impacts of the IR/IU rules. Rationalization may ease some aspects of the ''race for fish'', but may not eliminate all aspects because IR/IU flatfish are targeted during specific roe seasons and times of highest quality. However, possibilities for fleet consolidation or cooperative operations that might ease the economic burden of IR/IU flatfish rules could be explored during a delay in implementation. In the past several years, discards of yellowfin sole have been trending downward. Industry sources indicate that they have been doing all that they can to utilize all the IR/IU flatfish that they harvest and are actively attempting to develop markets for smaller fish.

Alternative 4 exempts fisheries from IR/IU flatfish regulations if flatfish discards are less than 5 percent of total groundfish catch. This analysis used two different estimates of the discard rates for determination of the IR/IU exemption. One estimate is based on a weighted average discard rate for 1995–2001, and a second estimate is based on a weighted average discard rate for 1999–2001. Discards exceed 5 percent in most flatfish fisheries and in Pacific cod trawl fisheries in the BSAI. The revenue reductions of this alternative are similar to those of Alternative 1.

Dated: April 15, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–9618 Filed 4–17–03; 4:46 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 75

Friday, April 18, 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

Forest Service

Carson National Forest, New Mexico, Agua/Caballos Proposed Projects

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to a Final Environmental Impact Statement.

SUMMARY: The Carson National Forest, El Rito Ranger District is preparing a supplement to the Final Environmental Impact Statement (FEIS) to disclose new information relevant to the analysis of proposed projects in the Agua/Caballos analysis area. Proposed projects include the allocation of old growth, harvesting of trees for sawtimber and forest products, prescribed burning, thinning, construction of new roads and reconstruction or closure of existing roads.

A Notice of Intent (NOI) to prepare an environmental impact statement was published in the **Federal Register** on April 22, 1997 (62 FR 195342). A Notice of Availability (NOA) for the Draft Environmental Impact Statement (DEIS) was published in the **Federal Register** on February 19, 1999 (64 FR 8356). An NOI to prepare a supplement to the DEIS was published in the **Federal Register** on December 20, 1999 (64 FR 771101). An NOA for the supplement to the DEIS was published in the **Federal Register** on August 18, 2000 (65 FR 50522).

A Record of Decision was signed on May 9, 2002 and an NOA was subsequently published in the **Federal Register** on July 19, 2002 (67 FR 47538).

The decision was appealed before the Regional Forester of the Southwestern Region on August 20, 2002. The appeal was reviewed in accordance with 36 CFR 215.7. The appeal decision issued on October 1, 2002 reversed the Responsible Official's decision on the Agua/Caballos Proposed Projects, with the following instructions:

(1) Complete the analysis of effects on MIS, considering population and habitat information collected at the forest plan level or at an appropriate geographical scale for a particular species.

(2) Upon completion of this analysis, circulate a Supplemental Environmental Impact Statement for public comment and issue a new decision under 36 CFR 215.

The supplement will disclose additional forest-wide information on management indicator species (MIS) identified in the Forest Plan and relate this supplemental information to the effects analysis of MIS that have potential habitat in the Agua/Caballos analysis area.

DATES: It is estimated that the supplement will be completed and distributed by the end of May 2003. A 45-day comment period will follow. The Final Environmental Impact Statement and record of decision is estimated to be released in August 2003.

ADDRESSES: The supplement will be available upon request from the Carson Forest Supervisor's Office, 208 Cruz Alta Road, Taos, NM 87571, Attn: Planning. Comments related to the supplement can be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Audrey Kuykendall, Forest NEPA Coordinator, Carson Forest Supervisor's Office, 208 Cruz Alta Road, Taos, NM 87571, (505) 758–6200.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The supplement is needed to complete the analysis of effects on MIS, considering population and habitat information collected at the forest plan level or at an appropriate geographical scale for a particular species.

Proposed Action: The supplement to the Final Environmental Impact Statement will disclose new information relevant to the analysis of proposed projects in the Agua/Caballos analysis area. Proposed projects include the allocation of old growth, harvesting of trees for sawtimber and forest products, prescribed burning, thinning, construction of new roads and reconstruction or closure of existing roads.

Responsible Official: The Forest Supervisor, Carson National Forest, is the responsible official and will decide whether projects will be implemented by the Forest Service in the Agua/Caballos analysis area. If so, the Forest Supervisor will decide what projects and where, how and when they will be implemented.

Scoping Process: The supplement will be circulated for public comment to those who were on the mailing list for the Record of Decision. Circulation is expected at the end of May, 2003.

Comment Requested: This notice of intent initiates the scoping process which guides the development of the supplemental environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A Draft Environmental Impact Statement will be prepared for comment. The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the Final Environmental Impact Statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action,

comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: April 11, 2003.

Martin D. Chavez, Jr.,

Forest Supervisor, Carson National Forest.

[FR Doc. 03–9607 Filed 4–17–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Helena National Forest, Montana Travel Management Plan for the South Belts, Divide, and Blackfoot Project Areas

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: This Notice of Intent (NOI) describes the Helena National Forest's proposal to revise the existing travel management on National Forest System lands in the South Belts, Divide, and Blackfoot project areas. The decisions to be made focus on what routes (both motorized and non-motorized) will be open or restricted depending on other resource needs. Signing or other physical structure will be used to implement the decision to reach chosen management objective. No route obliterations or relocations will be analyzed under this decision.

DATES: Comments concerning the scope of the analysis must be received by May 15, 2003. The draft environmental impact statement is expected late June 2003 and the final environmental impact statement is expected April 2004.

ADDRESSES: Send written comments to Kimberly Delgado-Public Affairs Officer c/o Helena National Forest, 2880 Skyway Drive, Helena, MT 59602.

For further information contact Chuck Neal-Forest Travel Planner or call at (406) 449–5201.

If you prefer, a ''scoping'' letter is available on the Web at *r1_Helena_webmaster@fs.fed.us*. You can submit comments at this location by typing on the subject line ''Attention Public Affairs Officer.''

SUPPLEMENTARY INFORMATION:

Background

Forest wide travel management planning update originally was proposed in November 2000. Formal public involvement for that planning effort began with the publication of the NOI to prepare an Environmental Impact Statement in the **Federal Register** in December of 2000. A scoping letter describing that proposal was mailed to over 1,300 individuals and groups and public meetings were held in the communities of Lincoln, Townsend, and Helena in December 2000.

In response to that NOI and scoping effort many letters, postcards, e-mails, petitions, and maps were received commenting on the proposal. A private contractor conducted a content analysis to identify the issues and concerns and grouped them into main categories. This content analysis was completed in March 2001. These responses are retained in the record.

In 2001, a number of factors influenced the Helena National Forest to set aside the 2000 Forest wide travel planning effort. These factors included the requirements to complete a Forest Roads Analysis and the need to place priority on restoration and timber salvage in response to the severe fires of 2000.

An additional change that influenced the complexity of the 2000 Forest wide travel planning effort was the July 2001 off-highway vehicle regulations affecting National Forests and BLM lands in Montana, North Dakota, and portions of South Dakota. This direction applies to all government lands where a site-specific travel plan has not been implemented and restricts wheeled motorized travel to roads and trails where evidence of motorized use existed at that time.

The Forest Wide Travel Plan of 2000 was rescinded in March of 2003 due to elapsed time since the appearance of the NOI in the **Federal Register** and changed scope of the proposal.

Purpose and Need for Action

The purpose for initiating this proposal is to have a network of open roads and trails that addresses the need for a variety of vehicular and non-vehicular use while meeting goals, objectives, and standards for the multiple resources present within the project areas.

The Helena Forest Plan, signed in 1986, did not fully anticipate the growing popularity of ATV's and snowmobiles. Subsequently, off-road travel and user-created routes were increasing until the 2001 OHV decision prohibited cross-country motorized travel. The decision amended the Helena Forest Plan to eliminate this activity and further directed the Forests to prioritize areas for subsequent site-specific travel planning. Therefore, there is a need to update the Forest Travel Plan to address both motorized and non-motorized uses.

The Helena National Forest visitor map displays 23 different time blocks for restrictions. This makes understanding, implementing, and enforcing the travel plan complex both for the users and the Forest Service. Therefore, there is a need for a more clear, simplified travel plan that is easier to understand and enforce.

Proposed Action

The Helena National Forest proposes to implement a travel plan for the South Belts, Divide, and Blackfoot project areas that provides motorized and non-motorized opportunities for both roads and trails. Forest Plan goals, objectives, and standards for other resources were key to the development of this proposed action such as providing adequate seasonal habitat for wildlife and maintaining water quality.

The proposed action is summarized below. Site-specific, route-by-route detail for each project area is available upon request. The proposed action includes the following elements:

1. Motorized and non-motorized roads and trails are identified and include the following four route types:

* Roads open to vehicles that meet the requirements of state laws,
* Motorized trails open to vehicles 50 inches wide or less,
* Non-motorized trails, and
* Snowmobile routes.

2. Potential ''connector'' local road or trail locations are identified for possible future decisions.

3. Open and restricted routes and areas for snowmobiles are delineated. Big game winter range areas are not open to snowmobile use; however, designated snowmobile routes through winter range are identified.

4. Vehicle access within 300 feet of an open, designated road is allowed primarily to access dispersed camping sites and other uses as long it does not result in unacceptable resource damage

such as rutting, crossing of wet meadows, or notable noxious weed spread.

To protect resources, the proposed action features the flexibility to restrict motorized use in the 300-foot zone in local situations if unacceptable resource damage occurs.

5. Stream fording by motorized vehicles is not allowed unless it is a part of a designated route (over snow vehicles are excluded from this feature as long as a stream is frozen).

6. Three categories of restrictions have been applied to identified routes. They are:

* October 15–December 1 (big game security),
* December 2–May 15 (winter range protection), and
* Yearlong.

Unique situations generating a need to temporarily modify the travel plan will use special orders or other methods on a case-by-case basis. These may include but are not limited to spring thaw, game retrieval, Grizzly Bear emergence, calving areas, firewood gathering, and non-ambulatory disabled access.

7. Off-route travel with respect to wheeled motorized vehicles is restricted per the 2001 State-wide OHV decision or as otherwise described in this proposed action.

8. Canada lynx conservation strategy has been applied resulting in no net increase in designated and/or groomed over-the-snow routes and snowmobile play areas in lynx habitat (generally higher elevation spruce/fir forest).

9. Access to private land holding within the National Forest Boundary was considered in developing the proposed action.

10. Routes with mixed traffic (street-legal and non-street-legal and licensed and unlicensed drivers) have been identified and typically are short segments. Some of these situations may be a mix of highway vehicles with ORVs or snowmobiles. These potential shared uses are highlighted to heighten the awareness to users of these routes. This shared use will be addressed as an administrative decision and is therefore not appealable within this process.

11. Routes that are open for motorized use, restricted yearlong, or restricted seasonally will be signed accordingly. Sites that have unique concerns or high resource values at risk, such as a bald eagle nest site, will be gated to increase closure effectiveness. Existing gates will continue to be used where appropriate.

12. To guide decisions about access to private lands that are located within the National Forest Boundary, the proposed action includes guidelines that consider private landowner needs as well as protection of resources on the National Forest System lands.

This proposal may not meet all Forest Plan standards such as wildlife security direction. These potential concerns will be fully analyzed in the EIS. If not fully compliant with the Forest Plan, appropriate actions will be taken; *e.g.* modify the alternative or propose site-specific Forest Plan amendments.

Project Area Descriptions

South Belts: The South Belts project area includes federal land administered by the USDA Forest Service from Mt. Boulder-Baldy near Confederate Gulch south to the Dry Creek watershed, west to the Forest boundary to other ownership and east to the Forest boundary to other ownership.

Divide: The Divide project area includes federal lands administered by the USDA Forest Service. It includes those National Forest system lands within the 10-Mile Creek drainage and the Little Blackfoot River drainage. Also included are those Federal lands that lie north of State Highway 12 to the Helena Ranger District-Lincoln Ranger District boundary near Nevada Mountain. The portion of the Helena Ranger District that lies within the Little Prickly Pear drainage is excluded from this analysis.

Blackfoot: The Blackfoot project area includes federal land administered by the USDA Forest Service. It includes the Helena National Forest Boundary north of the Scapegoat Wilderness, south to the Lincoln and Helena Ranger District boundary near Nevada Mountain, west to the Lolo National Forest boundary and east over the Continental Divide.

Responsible Official

The decisionmaker for these three project areas is the Forest Supervisor for the Helena National Forest.

Nature of Decision To Be Made

Incorporated in the following decisions is Forest Plan direction in providing a range of quality recreation, including motorized and non-motorized opportunities while implementing multiple Forest land and resource objectives and visitors' needs. The key decision points will include the following:

* Which roads, trails, and areas are appropriate for which types of public motorized and non-motorized use?
* Which roads, trails, and areas would have seasonal restrictions to protect wildlife or other resources?
* Whether or not a Forest Plan amendment(s) would be required?

The identified travel corridor connectors for local route systems will be evaluated and analyzed for future site-specific decisions.

Scoping Process

There are several options for you and/or your organization to make comments and participate in the process.

1. If you have substantive comments to the proposed action, please request a scoping package where you may fill out the attached Comment Sheet and return it to us. Your substantive comment must be specific to this proposed action to be helpful in this process. If possible, typed comments are most readily scanned for content identification purposes and comments can also be e-mailed, using the same general outline as the comment sheet, to: *r1_helena_webmaster@fs.fed.us.* In the subject line at this site, please include the following: Attention Public Affairs Officer.

2. Information about the Forest Travel Plan, including this scoping statement and the comment sheet, will be posted on the Helena National Forest Web site at *http://www.fs.fed.us/r1/helena/projects.* Information will be on the Web site by April 21, 2003.

3. There will be some public meetings in June and July of 2003. Please contact this office for specifics.

Your substantive response will be included in this analysis process. Your response should be specific and include reasons why you feel it should be considered. The key or significant responses will be used to formulate alternatives, prescribe mitigation measures, or be analyzed in environmental effects.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will begin in July of 2003 from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final

environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: April 14, 2003.

Allen L. Christophersen,

Deputy Forest Supervisor.

[FR Doc. 03–9571 Filed 4–17–03; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

EFFECTIVE DATE: May 18, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On June 28, December 27, 2002, and February 14, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 43548, 79044, and 68 FR 7499) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services added to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Custodial Service, Naval & Marine Corps Reserve Center, St. Louis, Missouri.

NPA: MGI Services Corporation, St. Louis, Missouri.

Contract Activity: Naval Facilities Engineering Command, Crane, Indiana.

Service Type/Location: Family Housing Maintenance, Sheppard Air Force Base, Texas.

NPA: Work Services Corporation, Wichita Falls, Texas.

Contract Activity: USAF-Air Education and Training Command, Sheppard AFB, Texas.

Service Type/Location: Janitorial/Custodial, Herbert Hoover Library, West Branch, Iowa.

NPA: Goodwill Industries of Southeast Iowa, Iowa City, Iowa.

Contract Activity: National Archives & Records Administration, College Park, Maryland.

Service Type/Location: Mailroom Operation. Social Security Administration, Sam Nunn Federal Building, Atlanta, Georgia.

NPA: Nobis Enterprises, Inc., Marietta, Georgia.

Contract Activity: Social Security Administration, Region IV, Atlanta, Georgia.

Deletions

On February 14, and February 24, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 F.R. 7499, and 8585) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

Accordingly, the following products and services are deleted from the Procurement List:

Products

Product/NSN: Index Sheet Set, Looseleaf Binder, 7530–00–160–8474.

NPA: Louisiana Association for the Blind, Shreveport, Louisiana.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: Seal, Metallic, 5340–00–491–7632, 5340–00–902–0426.

NPA: Michiana Resources, Inc, Michigan City, Indiana.

Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Services

Service Type/Location: Commissary Shelf Stocking, Point Mugu Naval Air Station, California.

NPA: Association for Retarded Citizens—Ventura County, Inc., Ventura, California.

Contract Activity: Defense Commissary Agency, Fort Lee, Virginia.

Service Type/Location: Commissary Shelf Stocking & Custodial, Fort Shafter, Hawaii.

NPA: Goodwill Industries of Hawaii, Inc., Honolulu, Hawaii.

Contract Activity: Defense Commissary Agency, Fort Lee, Virginia.

Service Type/Location: Commissary Shelf Stocking & Custodial. Presidio of San Francisco Commissary, San Francisco, California.

NPA: Calidad Industries, Inc., Oakland, California.

Contract Activity: Defense Commissary Agency, Fort Lee, Virginia.

Service Type/Location: Drill Sharpening, Naval Supply Center, San Diego, California.

NPA: The ARC of San Diego, San Diego, California.

Contract Activity: Department of the Navy, San Diego, California.

Service Type/Location: Janitorial/Custodial, Mare Island Naval Shipyard, Vallejo, California.

NPA: V-Bar Enterprises, Inc., Suisun City, California.

Contract Activity: Department of the Navy, Vallejo, California.

Service Type/Location: Janitorial/Custodial, Veterans Affairs Community Based Outpatient Clinic, St. George, Utah.

NPA: Washington County Association for Retarded Citizens, St. George, Utah.

Contract Activity: Department of Veterans Affairs, St. George, Utah.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–9627 Filed 4–17–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments must be received on or before: May 18, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Enamel, Aerosol,
8010–01–505–1962,
8010–01–505–1964,
8010–01–505–1966,
8010–01–505–1968,
8010–01–505–1970,
8010–01–505–1971,
8010–01–505–1973.

NPA: Lighthouse for the Blind, St. Louis, Missouri.

Contract Activity: GSA, Hardware & Appliances Center, Kansas City, Missouri.

Product/NSN: Quick Drop Mop Handles,
7920–00–NIB–0401 (Wood),
7920–00–NIB–0402 (Fiberglass),
7920–00–NIB–0403 (Vinyl Coated Metal).

NPA: New York City Industries for the Blind, Brooklyn, New York.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: U.S. Air Force Technical Manual Binder, 7510–00–241–4958.

NPA: York County Blind Center, York, Pennsylvania.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Base Supply Center, Maxwell Air Force Base and Gunter Annex, Building G850, Alabama.

NPA: Alabama Industries for the Blind, Talladega, Alabama.

Contract Activity: 42nd CONS/CC, Maxwell AFB, Alabama.

Service Type/Location: Janitorial/Custodial, Fridley USARC, Covington, Virginia.

NPA: Jackson River Enterprises, Covington, Virginia.

Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania.

Service Type/Location: Janitorial/Custodial, U.S. Marine Corps Reserve Center, Johnstown, Pennsylvania.

NPA: Goodwill Industries of the Conemaugh Valley, Inc., Johnstown, Pennsylvania.

Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–9628 Filed 4–17–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–852]

Creatine Monohydrate from the People's Republic of China: Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: On February 28, 2003, the Department of Commerce published a notice of initiation and preliminary results of its changed circumstances review in creatine monohydrate from the People's Republic of China examining whether Suzhou Sanjian Nutrient and Health Products Co., Ltd. is the successor-in-interest of Suzhou Sanjian Fine Chemical Co. Ltd. We gave interested parties an opportunity to comment on the preliminary results of review but received no comments. The final results do not differ from the preliminary results of review, in which we found that Suzhou Sanjian Nutrient and Health Products Co., Ltd. is the successor-in-interest of Suzhou Sanjian Fine Chemical Co. Ltd.

EFFECTIVE DATE: April 18, 2003.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv or Julie Santoboni, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4207 and (202) 482–4194, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On February 28, 2003, in accordance with Section 751(b) of the Act and 19 CFR 351.216 and 351.221(c)(3), the Department published its preliminary results in the **Federal Register**, preliminarily finding Suzhou Sanjian Nutrient and Health Products Co., Ltd. (''Suzhou Health Products'') to be the successor-in-in terest to Suzhou Sanjian Fine Chemical Co. Ltd. (''Suzhou Chemical''). (*See Creatine Monohydrate from the People's Republic of China; Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 68 FR 9635 (''Preliminary Results'')). We invited interested parties to comment on these findings. No comments were received.

Scope of the Review

Imports covered by this review are creatine monohydrate, which is commonly referred to as ''creatine.'' The chemical name for creatine monohydrate is N-(aminoiminomethyl)-N-methylgycine monohydrate. The Chemical Abstracts Service (''CAS'') registry number for this product is 6020–87–7. Creatine monohydrate in its pure form is a white, tasteless, odorless powder, that is a naturally occurring metabolite found in muscle tissue. Creatine monohydrate is provided for in subheading 2925.20.90 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading and the CAS registry number are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Final Results of Review

Because we received no comments on the preliminary results, for the reasons stated in the *Preliminary Results* and based on the facts on the record, we find Suzhou Health Products to be the successor-in-interest to Suzhou Chemical for antidumping duty cash deposit purposes. In order to make this determination, we examined the management structure of Suzhou Chemical, including, but not limited to, copies of business licenses, financial statements, sales documents and organizational charts. Since the record shows that Suzhou Health Products maintained the same senior management, organizational structure, production facilities, supplier relationships and customers, among other things, we determine that Suzhou Health Products is the successor-in-interest to Suzhou Chemical.

Suzhou Health Products will be assigned the same antidumping duty cash-deposit rate (*i.e.*, a 50.32 percent antidumping duty cash-deposit rate) with respect to the subject merchandise as Suzhou Chemical, its predecessor company. This cash deposit requirement will be effective upon publication of this notice of final results of changed circumstances review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date. This cash deposit rate shall remain in effect until publication of the final results of the next administrative review in which Suzhou Health Products participates.

This determination is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Act.

Dated: April 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–9637 Filed 4–17–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–809]

Cut-to-Length Carbon Steel Plate from Mexico: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 25, 2002, in response to a request made by Bethlehem Steel Corporation and United States Steel Corporation (''Petitioners''), the Department of Commerce (''the Department'') published in the **Federal Register** (67 FR 60210) a notice announcing the initiation of an administrative review of the antidumping duty order on cut-to-length carbon steel plate from Mexico. The review period is August 1, 2001, to July 31, 2002. This review has now been rescinded because Altos Hornos de Mexico, S.A. de C.V. did not have any shipments during the period of review (''POR'').

EFFECTIVE DATE: April 18, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–1394.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations are to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2002).

Scope of the Review

The merchandise under review is cut-to-length carbon steel plate. Although the Harmonized Tariff Schedule of the United States (HTSUS) subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

These products include hot-rolled carbon steel universal mill plates (*i.e.*,

flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X-70 plate.

Background

On August 30, 2002, Petitioners requested that the Department conduct an administrative review of the sales of subject merchandise made by Altos Hornos de Mexico, S.A. de C.V. (''AHMSA'') during the period August 1, 2001, to July 31, 2002. On September 25, 2002, the Department published in the **Federal Register** a notice announcing the initiation of an administrative review of the antidumping duty order on cut-to-length carbon steel plate from Mexico (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews*, (67 FR 60210) September 25, 2002). On October 8, 2002, the Department issued an antidumping questionnaire to AHMSA. On October 17, 2002, AHMSA submitted a letter to the Department stating that neither AHMSA, nor any of its affiliated companies sold, shipped, or entered for consumption cut-to-length carbon steel plate from Mexico into the United States during the POR. AHMSA also requested that the Department rescind the administrative review. In a letter dated October 25, 2002, petitioners requested that the Department investigate the conflict between AHMSA's claim of no entries or sales for consumption during the POR and the U.S. Census Bureau IM-145 data showing that 369 net tons of cut-to-length carbon steel plate from Mexico entered the United States during the POR. Petitioners also surmised that AHMSA is the only producer of cut-to-length carbon steel plate in Mexico. On March 25, 2003, the Department issued a supplemental questionnaire to AHMSA, inquiring whether AHMSA or any of its affiliates exported subject merchandise to the United States during the POR. On April 1, 2002, AHMSA responded to the Department's supplemental questionnaire. AHMSA stated that its only affiliated reseller, National de Acero S.A. de C.V. (''NASA'') did not have any exports of Mexican cut-to-length plate to the United States during the POR.

Pursuant to 19 C.F.R. 351.213(d)(3), the Department may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period of review, there were no entries, exports, or sales of subject merchandise. The Department performed a U.S. Customs Service query for entries of cut-to-length carbon steel plate from Mexico, classified under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers in the ''Scope Under Review'' section of this **Federal Register** notice. Additionally, the Department inquired with the U.S. Customs Service whether there were any shipments of cut-to-length carbon steel plate from Mexico. We found no entries or shipments from AHMSA or its affiliated reseller NASA during the POR of Mexican cut-to-length plate to the United States. This review has now been rescinded because AHMSA did not have any shipments during the POR. The Department will issue appropriate instructions to Customs.

This notice is issued and published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: April 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–9638 Filed 4–17–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030409079–3079–01; 040303A]

RIN 0648–ZB45

Coastal Services Center Financial Assistance for Coastal Observing System Projects

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of federal assistance.

SUMMARY: The NOAA Coastal Services Center is soliciting applications for federal assistance for the Director's Office in Coastal Observing System Support. This announcement provides guidelines which includes details for the evaluation criteria, and selection procedures. Selected recipients will enter into a grant with the Coastal Services Center.

DATES: Applications are due by 5 p.m., e.d.t., May 30, 2003. Applications received after that time will not be reviewed.

ADDRESSES: Send all proposals to NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina 29405–2413, Attention Geno Olmi, Room 234A.

FOR FURTHER INFORMATION CONTACT: Administrative questions should be directed to Violet Legette, 843–740–1222 or *Violet.Legette@noaa.gov*. Technical point of contact is Geno Olmi at 843–740–1230 or *Geno.Olmi@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Coastal Services Center is soliciting applications for federal assistance for Coastal Observing System Projects. Recipients will enter into a grant with the Coastal Services Center.

All applicants are required to submit a NOAA Grants application package, budget narrative, curriculum Vitae for each principal investigator, and project proposal. The standard NOAA grants application package includes SF–424, SF–424A, SF–424B, CD–511, CD–512, SF-LLL and CD–346. These forms can be obtained from the NOAA grants Web site at *http://www.rdc.noaa.gov/grants/pdf/*. NOTE: CD–512 is a form that the recipient maintains. DO NOT submit this form to the Coastal Services Center. Also, SF-LLL should only be submitted as part of the grant application, if the recipient is reporting lobbying activities. If applicant is any of the following, a CD–346 is required to be submitted with

grant application: sole proprietor, a partnership, a corporation, a joint venture and a non-profit organization. Other applicants are not required to submit a CD–346 with application.

If recipients have difficulty downloading grant forms, please contact Violet Legette at 843–740–1222 for assistance.

Authority

Statutory authority for this program is 16 U.S.C. 1456c.

CFDA Number: 11.473 Coastal Services Center.

Project Description

The Coastal Services Center seeks proposals for projects that enhance the organization, implementation, and application of regional coastal ocean observing systems. For the purposes of this announcement, coastal ocean observing systems are meant to include the sensors, personnel, and data management that obtain regular and sustained in-situ and/or remote observations of the physical, chemical, and biological environment of Great Lakes, estuaries, and the near shore ocean of the United States. Total available funding under this announcement is expected to not exceed $750,000. The Coastal Services Center desires to fund two types of projects to benefit the development of regional coastal ocean observing systems: (1) projects that facilitate building partnerships and regional organizational structures for regional observing systems, and (2) regional pilot projects.

For the first type of project, Regional Observation System Coordination, the Coastal Services Center seeks to fund projects that will engage stakeholders in a given region to develop collaborative partnerships (Regional Associations) among data collectors, data managers, and users of data and information from coastal ocean observing systems. Proposals should clearly articulate an approach to identify stakeholders, bring them together in a meaningful way, and develop plans for governance and communication, implementation, data management, and product development. The Coastal Services Center believes that it is important to engage end users in the design and implementation of observing systems to maximize the benefits to science and society. Of particular interest to the Coastal Services Center is the utility of such systems for management of coastal and ocean resources and for the benefit of coastal communities. Total available funding for this type of project is anticipated to be between $200,000 to $350,000, subject to the availability of federal appropriations. The Coastal Services Center expects to award two to five grants of $20,000 - $100,000 each under this announcement for Regional Observation System Coordination.

The second type of proposal requested is to support implementation of a Regional Coastal Ocean Observation Pilot Project. Pilot project(s) should demonstrate inter-institutional collaboration within a region for sensor deployment, data management, and creation of information products from the data collected. Projects should emphasize regular and sustained in-situ and/or remote observations of the physical, chemical, and biological coastal ocean environment. The pilot project should demonstrate data documentation and management protocols that meet or exceed national standards (FGDC compliant) and ensure accuracy and interoperability with the developing Integrated Ocean Observing System (IOOS). The pilot project should have a defined set of users and create information products relevant to those users. The Coastal Services Center encourages proposals that demonstrate active involvement of public mission agencies. The Coastal Services Center also encourages proposals that develop or sustain observing systems under the auspices of an established or planned regional association with a defined governance structure. Total available funding for Regional Pilot Project(s)is anticipated to be between $250,000 to $500,000, subject to the availability of federal appropriations. The Coastal Services Center expects to award only one to two grants under this announcement.

Background

The National Oceanic and Atmospheric Administration has a long-standing responsibility to observe, assess and predict conditions in the Nation's oceans and atmosphere. NOAA has a number of operational programs that routinely and systematically measure environmental variables in the atmosphere, open and coastal ocean, estuaries, and the Great Lakes. In addition to its own operational programs, NOAA develops collaborative partnerships with states, universities and for profit and non-profit organizations to increase the scope of its environmental data collection.

Congress has directed the interagency National Ocean Research Leadership Council to develop a plan by which the nation can achieve an Integrated Ocean Observing System. Responsibility for development of this plan has been given to the Ocean.US Office *www.ocean.us*. The Integrated Ocean Observing System is envisioned to consist of a ''national backbone'' of federally-maintained observations integrated with ''regional'' systems that contribute to and benefit from the national backbone and also focus on interests of a local/regional nature. Integration of regional and national components into a national coastal observing system will rely on common data management standards that allow data integration to create products that benefit a broad community of users. While the fully mature IOOS is envisioned to be mostly operational in nature, the developmental stages are expected to include research, pilot, pre-operational and operational components.

The Coastal Services Center has a strong interest in working with regional observing systems and partners to achieve integration into a national system. The Coastal Services Center is particularly interested in regional systems that provide timely and appropriate information to public mission agencies. Therefore, the Coastal Services Center anticipates offering grant funds to projects that help achieve these goals.

Project Proposals

The applicant must submit one original and two copies of the proposal(s) by 5 p.m. (Eastern time) on May 30, 2003 to the attention of Geno Olmi, Room 234A at the NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, SC 29405–2413. In addition to the proposal(s), the applicant must submit a complete NOAA grant application package (with signed originals). No e-mail or fax copies will be accepted. All project proposals must total no more than 20 pages (double spaced, 12–point font, and exclusive of appendices). Appendices should be limited to materials that directly support the main body of the proposal (e.g., support letters, resumes, lists of data sources, maps). Letters of support may be mailed separately, but must be received by the 30 May 2003, deadline. All appendix material must be unbound. All proposals must include sections on the seven following topics:

1. Background. Provide sufficient background information for reviewers to independently assess the significance of the proposed project. Summarize the problem to be addressed and the status of your ongoing efforts to address the problem.

2. Benefits. Identify specific potential users of the information derived from this work and the benefits that will be achieved to those users as well as society as a whole. Describe how this

information from this project will be delivered to those users.

3. Goal(s) and Objective(s). Describe in the narrative the specific project goals and objectives to be achieved. Describe how these project goals support the broader goals of the Integrated Ocean Observing System.

4. Project Description/Methodology. Provide a general work plan that identifies specific tasks to be accomplished, explains the technical approach (including quality control protocols) needed to accomplish the tasks, identifies the roles of partners and cooperators, and identifies potential obstacles to successful completion of the goals and objectives. Describe how potential users are involved in the planning and design process.

5. Milestone Schedule. Display time lines for major tasks, target milestones for important intermediate and final products, and key project outcomes. The time period (period of performance) for the award may be 1–3 years, but funding is assured for only the first year.

6. Project Budget. Provide a detailed budget description that follows the categories and formats in the NOAA grants package and a brief narrative justification of the budget.

7. Resumes. Provide resumes of the Principal Investigator for the project and for other key personnel critical to the success of the project. Ensure that resumes address qualifications relevant to conducting the proposed work. Please limit to two pages for each.

Evaluation Criteria (with Weights) and Selection Process

A review panel, composed of two NOAA and two non-NOAA reviewers, will be established to evaluate the proposals on the basis of the evaluation criteria listed below. The panelists will provide individual evaluations of proposals, thus there will be no consensus recommendation. All proposals reviewed will be ranked according to the average score and the selecting official (the Center's Director) will use those rankings as the basis for the final funding decisions. The selecting official may also consider the following program policy factors: geographic and institutional balance. Thus proposals with the highest scores may not necessarily be selected for award. Reviewers of the proposal will be asked to judge the merits of the proposal with respect to the following criteria:

1. Significance (25%):

How well does the proposal demonstrate that the project will directly or indirectly address critical national, regional, state or local management needs? Are the goals and objectives clearly articulated and relevant tot he stated management or science need?

2. Approach (20%):

Is the technical approach appropriate for the stated goals and objectives? Are the goals and objectives achievable within the proposed timeframe? Does the proposed approach follow a logical work plan with clearly defined and measurable milestones? Do the proposed approaches incorporate innovative or state of the art methodologies? Does the proposal explicitly address data management practices that meet or exceed FGDC standards and promote interoperability with other components of a national ocean observing system?

3. Project Management (10%):

Does the proposal demonstrate institutional support for the project? Are the principal investigators and the organizational framework and personnel qualified to conduct a project of the nature and scope proposed?

4. Partnerships (15%):

Does the proposed project engage external partners to make effective use of complimentary capabilities and competencies beneficial to this project? Is the user community clearly identified and are members of the identified user community engaged in the design and execution of the project or its products? Is duplication of effort reduced through strategic partnerships?

5. Application of Results (20%):

Does the proposal demonstrate that it will significantly address relevant science and management issues? Does the proposal demonstrate that information generated by the project will reach its target audience and have a positive impact on the users ability to perform their responsibilities? Does the proposal include outreach and education components that will ensure the results are effectively applied to address the identified issues?

6. Cost Efficiency (10%):

Does the proposal demonstrate that the budget is commensurate with project needs?

Selection Schedule

Proposals will be reviewed once during the year. The following schedule lists the dates for the project selection and award process for grants: Proposal Deadline (with completed grant package) May 30, 2003. The review process will take up to three months, and applicants will not be notified of the status of their application until the review process is completed. Earliest Approximate Grant Start Date 1 October 2003. Note: All deadlines are for receipt by close of business (5 p.m. Eastern time) on the dates identified. Receipt of proposal and grant package (with original signatures) will be time stamped. Unsuccessful applications will be destroyed by the Program Manager and not returned to the applicant.

Funding Availability

Total funding available for the Coastal Observing System Projects with the Director's Office is anticipated to be no more than $750,000 and funding will be distributed among multiple Projects. The Coastal Services Center desires to fund two types of projects to benefit the development of regional coastal ocean observing systems: (1) projects that facilitate building partnerships and regional organizational structures for regional observing systems (estimated funding for this type of project is anticipated to be between $200,000 to $350,000 with two to five grants being awarded ranging from $20,000 to $100,000), and (2) regional pilot projects (estimated funding for this type of project is anticipated to be between $250,000 to $500,000 with only one or two grants being awarded). Publication of this document does not obligate NOAA to fund any specific grant or to award all or any parts of the available funds.

Cost Sharing

There is no requirement for cost sharing in response to this program announcement.

Eligibility Criteria

Eligible applicants are institutions of higher education, non-profit and for-profit organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments. Organizations are encouraged to collaborate in development of multi-institutional proposals, however, funding for such a proposal must be awarded to a single (lead) entity that then has responsibility for administration and execution of any subawards. Federal agencies or institutions are not eligible to receive Federal assistance under this announcement, but may be project partners. Note: Federal agencies or institutions who are project partners must demonstrate that they have legal

authority to receive funds from outside sources in excess of their appropriation.

General Information

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 01, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

The recipients must comply with Executive Order 12906 regarding any and all geospatial data collected or produced under grants or cooperative agreements. This includes documenting all geospatial data in accordance with the Federal Geographic Data Committee Content Standard for digital geospatial data.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act (APA) or any other law for this notice concerning grants, cooperative agreements, benefits, and contracts, 5 U.S.C. 533 (a) (2). Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et. seq and has not been prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number. The use of the standard grants application package referred to in this notice involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Dated: April 14, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management

[FR Doc. 03–9634 Filed 4–17–03; 8:45 am]

BILLING CODE 3510–JE–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031803B]

Marine Mammals; File No. 116–1697

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Sea World Inc., 7007 Sea World Drive, Orlando, FL 32821, has applied in due form for a permit to take one Guadalupe fur seal (Arctocephalus townsendi) for purposes of enhancement.

DATES: Written or telefaxed comments must be received on or before May 19, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant requests authorization to permanently maintain one non-releaseable rehabilitated juvenile male Guadalupe fur seal at Sea World of California (and other Sea World facilities if relocation is necessary) for enhancement purposes. The animal has recurring grand mal seizures and thus, release of this animal may not be in the best interest for the wild population due to the undetermined cause of the condition and the possibility that it may be hereditary. The animal would be provided with daily husbandry care and treatment for seizures, routine medical procedures and neutering, and would be available for opportunistic research. The applicant has requested a five-year permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 14, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–9635 Filed 4–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the U.S. European Command Senior Advisory Group

AGENCY: Department of Defense.

ACTION: Notice of establishment.

SUMMARY: The U.S. European Command Senior Advisory Group (SAG) is being established in consonance with the public interest and in accordance with the provisions of Pub. L. 92–463, the ''Federal Advisory Committee Act,'' title 5 U.S.C., appendix 2. The SAG will provide the Commander, U.S. European Command with advice, guidance, and assistance toward fulfilling its mission.

The SAG will be composed of a broad spectrum of nationally renowned civilian and military members able to give diverse and divergent points of

view. The committee will be balanced among military and civilian national security experts, academicians, civilian leaders in public service, and others who will afford this command multiple views on issues affecting strategic planning.

FOR FURTHER INFORMATION CONTACT: COL Timothy C. Touzinsky, USA, at (703) 693–4850.

Dated: April 14, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9580 Filed 4–17–03; 8:45 am]

BILLING CODE 5001–08–M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8 a.m. to 4 p.m., May 16, 2003.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED: 8 a.m. Meeting—Board of Regents

(1) Approval of Minutes—February 4, 2003.

(2) Faculty Matters.

(3) Departmental Reports.

(4) Financial Report.

(5) Report—President, USUHS.

(6) Report—Dean, School of Medicine.

(7) Report—Dean, Graduate School of Nursing.

(8) Comments—Chairman, Board of Regents.

(9) New Business.

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: April 15, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9835 Filed 4–16–03; 3:32 pm]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services invites applications for FY 2003 under the Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program. This program is authorized under the Individuals with Disabilities Education Act (IDEA), as amended. This notice provides closing dates, a priority, and other information regarding the transmittal of applications.

Please note that important fiscal information is listed in a table at the end of this notice.

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priority in this notice.

Purpose of Program: This program provides technical assistance and information that (1) support States and local entities in building capacity to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address goals and priorities for changing State systems that provide early intervention, educational, and transitional services for children with disabilities and their families.

Eligible Applicants: State educational agencies (SEAs) of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, outlying areas and Freely Associated States that have not been awarded grants under this competition (84.326X) in previous years. Eligible applicants are listed in the chart at the end of this notice.

An entity eligible to apply for funding under section 661(b)(1) of IDEA may apply on behalf of an SEA, but the entity must include a signed letter of endorsement from the director of the SEA.

The Assistant Secretary does not fund an application submitted by two agencies or entities on behalf of a single State, but encourages a joint application from an SEA and a State lead agency for part C early intervention services in a State in which the SEA is not the State lead agency. An SEA may endorse the State lead agency as the State's applicant under the conditions in the *Maximum Awards* section of this notice.

Applications Available: April 18, 2003.

Deadline for Transmittal of Applications: June 2, 2003.

Deadline for Intergovernmental Review: August 1, 2003.

Estimated Available Funds: $7 million.

Estimated Range of Awards: The chart at the end of this notice lists the range for State basic grant awards for FY 2003.

Estimated Average Size of Awards: $465,000.

Maximum Awards: The chart at the end of this notice lists the amount of State basic grant awards for FY 2003. An applicant should note that it may apply for awards of differing amounts based on whether its application addresses (1) only the part B program; or (2) both the parts B and C programs.

The amounts for a State basic grant are based on the Office of Special Education Programs (OSEP) assessment that the minimal amounts necessary for a State to address only part B program needs and both parts B and C program needs are $120,000 and $200,000 respectively. Calculation of amounts above the minimum levels was based on the 85 percent population rate and 15 percent poverty rate used in the calculation of part B formula grant awards.

Outlying areas are eligible to receive $104,000 for addressing only part B and $130,000 for addressing both parts B and C.

A State may not propose a budget in its application for the basic grant award that exceeds the amounts in this notice.

We will reject any application that proposes a budget exceeding the maximum amount listed on the chart. The Assistant Secretary may reduce the grant award levels based on available funds.

Other Application Requirements

To be considered for a combined parts B and C award, a proposed project must describe in the application narrative (part III): (1) How the SEA and State lead agency participated in developing the application; and (2) how the project will use the funding to address the needs of both the parts B and C programs.

If an SEA endorses the State lead agency as the State's applicant, the proposed project must describe: (1) How the State lead agency and SEA collaborated to develop the application; and (2) how the State lead agency will use the award to address the needs of both the parts B and C programs (*e.g.,* developing or enhancing a data system that tracks the transition of toddlers from part C to part B services).

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: September 30, 2003—September 30, 2004.

Page Limits: If you are an applicant, part III of an application submitted under this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application.

If your proposed project addresses only part B, you must limit part III to the equivalent of no more than 20 pages for a basic grant. If your proposed project addresses both part B and part C you must limit part III to the equivalent of no more than 30 pages. To determine the number of pages or the equivalent, you must use the following standards:

- A ''page'' is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger and no smaller than 10 pitch (characters per inch).

The page limit does not apply to part I, the cover sheet; part II, the budget section, including the narrative budget justification; part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in part III.

We will reject any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Additional Requirements

(a) The projects funded under this competition must make positive efforts to employ and advance in employment in project activities qualified individuals with disabilities (*see* section 606 of IDEA).

(b) Applicants and grant recipients under this competition must involve qualified individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (*see* section 661(f)(1)(A) of IDEA).

(c) The projects funded under this competition must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program—CFDA #84.326X is one of the programs included in the pilot project. If you are an applicant under this program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-Application pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- Closing Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for The Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail or hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension.

To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for The Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; (b) The selection criteria are drawn from the general selection criteria in 34 CFR 75.210. The specific selection criteria for this priority are included in the application package for this competition.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

Priority

Under section 685 of IDEA and 34 CFR 75.105(c)(3) we consider only applications that meet the following absolute priority:

Absolute Priority—IDEA General Supervision Enhancement Grant (84.326X)

Background

Over the past seven years, OSEP has worked with interested parties to modify its monitoring system in a way that will improve results for infants, toddlers, and children with disabilities, and their families. The interested parties OSEP has worked with have included SEAs, local educational agencies, parents and advocates. To ensure States' compliance with IDEA, OSEP has implemented a Continuous Improvement Focused Monitoring System (CIFMS). An in-depth explanation of CIFMS can be found at: *http://dssc.org/frc/monitor.htm.*

Since the implementation of CIFMS, SEAs and State lead agencies have endorsed the concept. All of the States have been involved in some phase of CIFMS. Many States have begun the difficult process of—

(1) Developing CIFMS systems at the State level;

(2) Supporting the development of CIFMS systems at the LEA level;

(3) Developing new data systems to support State and local CIFMS systems; and

(4) Developing or enhancing State systems to identify and disseminate research-based promising practices in education and early intervention.

Providing the States with some initial funds to support their participation in CIFMS, as well as to support unique State solutions and strategies developed in response to State-specific challenges identified through participation in CIFMS will reinforce OSEP's and the States' commitment to CIFMS.

Absolute Priority

To be funded under this priority, a project must address one or more of the following three focus areas.

Focus 1: Developing or Enhancing a Data System To Support the Needs of a CIFMS at the State or Local Level

Background

The collection and use of valid and reliable data are cornerstones of CIFMS. An analysis of State self-assessments has shown that many States, as well as their LEAs and local Part C agencies, lack the capacity to collect sufficient data to determine the impact of special education and early intervention services.

Focus

This focus supports the development or enhancement of a data system that is aligned with the data collection needs of CIFMS and that will provide information about one or more of the following:

(a) Appropriate early intervention services or special education and related services or both.

(b) The effectiveness of the monitoring system of the SEA or State lead agency or both.

(c) The effectiveness of interagency coordination.

(d) The effectiveness of the State's dispute resolution system.

(e) The effectiveness of the State's system to identify children's eligibility for part B or part C services or both.

(f) Personnel shortages, including information related to the retention of qualified teachers and service providers.

(g) The system for exercising the general supervisory authority of the SEA or State lead agency or both.

(h) Efforts to address family needs and enhance families' capacities to meet the developmental needs of their children.

(i) Early intervention services in the natural environment or special education and related services in the least restrictive environment or both.

(j) The transition from part C to part B services.

(k) The involvement of parents.

(l) Transition of youth with disabilities from school to work or postsecondary education, including graduation.

(m) Student achievement and participation and performance on assessments of students with disabilities.

Focus 2: Developing or Enhancing a Process to Conduct Activities To Plan Improvement Based on CIFMS

Background

The process of developing improvement plans is a critical component of CIFMS. If done properly, improvement planning will result in improved special education and related services and early intervention or both. OSEP's analysis of State improvement plans in response to OSEP monitoring reports has shown that many States lack a cohesive data-based approach to developing their improvement plans. Many States have had trouble identifying and addressing the systemic barriers, root causes or factors that contributed to the practice that the State or OSEP has determined needs improvement.

Focus

This focus supports the development or enhancement of a process for planning improvement. The process must be aligned with the improvement planning phase of CIFMS and should result in solutions that, for example —

(a) Identify underlying causes and/or systemic barriers to improved early intervention services or special education and related services or both;

(b) Address the root causes and/or systemic barriers to improved early intervention services or special education and related services or both;

(c) Include an evaluation component that assesses the impact of early intervention services or special education and related services or both;

(d) Include an evaluation component that assesses how changes in staff practice affect the provision of special education and related services or early intervention services or both;

(e) Are aligned or coordinated with the State's initiatives for general education reform; and

(f) Are consistent with and responsive to the findings of OSEP monitoring reports.

Focus 3: Developing or Enhancing State Systems To Identify, Disseminate, and Implement Promising Educational or Early Intervention Practices Based on Research

Background

OSEP has found that, to be fully effective, many improvement plans require a State technical assistance and dissemination structure to identify, disseminate, and implement promising educational or early intervention practices based on research. In many States this structure is either

nonexistent or lacks sufficient resources to be effective.

Focus

This focus supports the development or enhancement of a statewide technical assistance system that is consistent with CIFMS that is aligned with the process for planning improvement and that addresses such areas as—

(a) Providing information about intervention and instructional practices based on research;

(b) Supporting the use of research-based approaches in instruction and the delivery of service in local schools and agencies;

(c) Serving as a conduit for the dissemination of research-based information among SEAs, State lead agencies, LEAs and Part C agencies, and national technical assistance centers; and

(d) Improving the efficiency of disseminating information by existing State technical assistance centers.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. If you use a telecommunications device for the deaf (TDD) you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*, or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA 84.326X.

FOR FURTHER INFORMATION CONTACT: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

The program in this notice is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2003

CFDA number, name of program and eligible applicants	Maximum award for basic grants (per year)	
84.326X IDEA General Supervision Enhancement Grant	IDEA part B only (dollars)	IDEA parts B & C (dollars)
California	1,204,108	1,498,815
Delaware	180,315	288,420
Georgia	437,899	586,475
Indiana	311,574	444,932
Kentucky	280,131	403,698
Louisiana	329,535	458,181
Michigan	486,570	641,313
Mississippi	254,523	374,812
Missouri	325,206	456,558
Nevada	218,306	332,402
North Carolina	407,088	551,843
North Dakota	176,540	283,572
South Dakota	181,360	289,049
Tennessee	344,487	476,970
Texas	944,500	1,177,426
Washington	337,264	472,348
West Virginia	209,835	321,817
Wisconsin	327,120	455,911
Wyoming	172,591	278,879
Virgin Islands	104,000	130,000

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/nara/index.html.*

Program Authority: 20 U.S.C. 1485.

Dated: April 14, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–9540 Filed 4–17–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–232]

Grand River Dam Authority; Notice Granting Late Interventions

April 14, 2003.

On June 28, 2001, the Commission issued a notice of the application for a non-capacity amendment of license filed by the Grand River Dam Authority for the Pensacola Dam Project No. 1494, located on the Grand (Neosho) River in the Oklahoma Counties of Craig, Delaware, Mayes, and Ottawa. The notice established August 10, 2001, as the deadline for filing motions to intervene in the proceeding.

Late motions to intervene in the proceeding were filed by the following entities and individuals: Mike Brady on September 7, 2001; James P. Freeman, trusteee of the Jeri I. Freeman Trust on November 28, 2001; Cheryl Lenhart on November 4, 2002; and Cheryl Creekmore on November 5, 2002. Granting the late motions to intervene will not unduly delay or disrupt the proceeding, or prejudice other parties to it. Therefore, pursuant to rule 214,[1] the late motions to intervene in the proceeding are granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9557 Filed 4–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6032]

Niagara Mohawk Power Corporation and Fourth Branch Associates (Mechanicville); Notice of Meeting

April 14, 2003.

On August 12, 2002, the Commission issued an order accepting surrender of the license for the Mechanicville Project

[1] 18 CFR 385.214 (2002).

No. 6032.[1] The order required Niagara Mohawk Power Corporation (NIMO) to submit plans and schedules for, among other things, complying with the Commission's regulations concerning dam safety (18 CFR part 12) and for recording historic resources associated with the project prior to the effective date of surrender.

On Tuesday, April 29, 2003, at 11 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, Commission staff will hold a conference to hear a proposed settlement between NIMO and Fourth Branch Associates (Mechanicville) for the disposition of the Mechanicville Project. Parties to the proceeding and all interested persons will be permitted to attend.

Any party or interested person who is planning to attend this meeting should notify Commission staff before 4:30 pm, Thursday, April 24, 2003. Please notify Heather Campbell, Office of Energy Projects, Rm 5J–02, in writing, or by calling at 202–502–6182. If any local, state or federal authorized agency representative is unable to attend but wishes to participate by teleconferencing, please so indicate. Teleconferencing details will be provided later.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9561 Filed 4–17–03; 8:45 am]

BILLING CODE 6717–01–P

[1] 99 FERC ¶ 61,227 (2002), reh'g denied, 100 FERC ¶ 61,185 (2002), request for reconsideration pending.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 20–019, 2401–007, and 472–017]

PacifiCorp; Notice Granting Late Intervention

April 14, 2003.

On March 15, 2000, the Commission issued a notice of new major license applications filed by PacifiCorp for the Bear River Hydroelectric Projects—Soda Hydroelectric Project No. 20–019, Grace-Cove Hydroelectric Project No. 2401–007, and Oneida Hydroelectric Project No. 472–017, located on the Bear River in Caribou and Franklin Counties, Idaho. The notice established May 15, 2000, as the deadline for filing motions to intervene in the proceeding.

On April 11, 2002, a late motion to intervene was filed by David Weber. Granting the late motion to intervene will not unduly delay or disrupt the proceeding or prejudice other parties to it. Therefore, pursuant to rule 214,[1] the late motion to intervene filed in this proceeding by David Weber is granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9558 Filed 4–17–03; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.214 (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2897–003, 2931–002, 2932–003, 2941–002 and 2942–005]

S. D. Warren Company; Notice Granting Late Interventions

April 14, 2003.

On April 23, 1999, the Commission issued a ''Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests'' for the Saccarappa, Gambo, Mallison Falls, Little Falls and Dundee Project Nos. 2897–003, 2931–002, 2932–003, 2941–002 and 2942–005, located on the Presumpscot River in Cumberland County, Maine. The notice established June 21, 1999, as the deadline for filing motions to intervene in the proceeding.

On July 6, 1999, September 7, 1999, September 13, 1999, September 22, 1999 and September 29, 1999, motions to intervene were filed by the United States Environmental Protection Agency, Robert P. Hennick, The Sebago Lake Anglers Association, American Rivers, Inc. and Allan Desjardin. Granting the late motions to intervene will not unduly delay or disrupt the proceeding or prejudice other parties to it. Therefore, pursuant to rule 214,[1] the late motions to intervene filed in this proceeding by the United States Environmental Protection Agency, Robert P. Hennick, the Sebago Lake Anglers Association, American Rivers and Allan Desjardin are granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9560 Filed 4–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–74–000, et al.]

Hanover Power. LLC, et al.; Electric Rate and Corporate Filings

April 10, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Hanover Power, LLC, Fresno Power Investors, L.P., and Harold E. Dittmer

[Docket No. EC03–74–000]

Take notice that on April 2, 2003, Hanover Power, LLC (HP), Harold E. Dittmer (Mr. Dittmer), and Fresno Power Investors, L.P. (FPILP) (collectively, the Applicants), filed with the Federal Energy Regulatory Commission (the Commission) an application pursuant to Section 203 of the Federal Power Act seeking authorization for the transfer of certain jurisdictional facilities whereby Applicants request approval of the transfer of 49% of the upstream membership interests in Wellhead Power Panoche, LLC from HP to Mr. Dittmer and FPILP.

Comment Date: April 23, 2003.

2. Maine Public Service Company and Energy Atlantic, LLC

[Docket No. EC03–75–000]

Take notice that on April 2, 2003, Maine Public Service Company (Maine Public) and its wholly-owned subsidiary, Energy Atlantic LLC (Energy Atlantic), filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of a proposed intracorporate reorganization whereby Maine Public and Energy Atlantic will become direct, wholly-owned subsidiaries of a newly formed corporation.

Main Public and Energy Atlantic states that copies of this filing were served upon the Maine Public Utilities Commission and the Maine Public Advocate Office.

Comment Date: April 23, 2003.

3. Williams Energy Marketing & Trading Company and Progress Ventures, Inc.

[Docket No. EC03–76–000]

Take notice that on April 4, 2003, Williams Energy Marketing & Trading Company (Williams EMT) and Progress Ventures, Inc.(Progress Ventures) tendered for filing with the Federal

Energy Regulatory Commission (Commission), a joint application pursuant to section 203 of the Federal Power Act and a request for expedited approval of a proposed transaction whereby Williams EMT will assign its interest in a Power Supply and Energy Call Agreement between Williams EMT and Jackson Electric Membership Corporation (Jackson EMC) to Progress Ventures.

Williams EMT and Progress Ventures state that copies of the public version of this filing were served upon the Georgia Public Service Commission and Jackson EMC.

Comment Date: April 25, 2003.

4. Aquila Piatt County Power L.L.C.

[Docket No. EG03–58–000]

Take notice that on April 8, 2003, Aquila Piatt County Power L.L.C. (Aquila Piatt) filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission regulations.

Aquila Piatt filed its Application in conjunction with the proposed operation of a newly constructed 480 MW simple cycle merchant power plant consisting of six GE 7EA gas-fired combustion turbines located in Piatt County, Illinois.

Comment Date: May 1, 2003.

5. Pacific Gas and Electric Company

[Docket No. ER02–479–003]

Take notice that on April 7, 2003, Pacific Gas and Electric Company (PG&E) submitted for filing a refund report, as directed by the Commission's Letter Order dated December 26, 2002, and the subsequent notice granting an extension of time, issued on January 27, 2003 in Docket Nos. ER02–250–000, ER02–257–000 and ER02–479–000.

PG&E states that copies of this filing have been served upon the parties of record in Docket Nos. ER02–250–000, ER02–257–000 and ER02–479–000.

Comment Date: April 28, 2003.

6. Bangor Hydro-Electric Company

[Docket No. ER03–635–001]

Take notice that on April 4, 2003, Bangor Hydro-Electric Company (BHE) filed supplemental information concerning the Pre-Construction Agreement between BHE and Brascan Energy Marketing, Inc. (BEMI) for the BHE/Great Northern Paper Company—Millinocket 115 kV Interface Project. BHE requests an effective date of October 25, 2002 for the filing.

Comment Date: April 25, 2003.

7. WPS Canada Generation, Inc.

[Docket No. ER03–689–001]

Take notice that on April 8, 2003, WPS Canada Generation, Inc., (WPS) filed a supplement to its April 1, 2003 filing of rate schedules for its Reactive Supply and Voltage Control from Generation Sources Services (Reactive Power Service).

WPS Canada Generation, Inc., states that copies of the filing were served upon Maine Public Service Company; the Northern Maine Independent System Administrator, Inc.; the Houlton Water Company; Eastern Maine Electric Cooperative; and Van Buren Light and Power District.

Comment Date: April 29, 2003.

8. Consumers Energy Company

[Docket No. ER03–15–003]

Take notice that on April 8, 2003 Consumers Energy Company (Consumers) tendered for filing in this docket a copy of its March 31, 2003 filing in Docket No. ER03–388–001. That March 31, 2003 filing included changes to Sheet No. 23 of Consumers' First Revised Rate Schedule No. 116, pursuant to a February 27, 2002 deficiency letter issued in Docket No. ER03–388–000. By the April 8, 2003 filing, the changes included in the March 31, 2003 filing are bing submitted in Docket No. ER03–15–003.

Consumers states that copies of the filing were served upon those on the official service list.

Comment Date: April 29, 2003.

9. Marina Energy, LLC

[Docket No. ER03–715–000]

Take notice that on April 7, 2003, Marina Energy, LLC (Marina) tendered for filing, Marina Rate Schedule FERC No. 1, under which Marina will engage in wholesale electric power and energy transactions as a marketer. Marina requests an effective date of 60 days from date of filing or upon issuance of the Commission's Order, whichever occurs first.

Comment Date: April 28, 2003.

10. Chehalis Power Generating Limited Partnership

[Docket No. ER03–717–000]

Take notice that on April 7, 2003, Chehalis Power Generating Limited Partnership (Chehalis Power) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Chehalis Power states that it proposes to own and operate a 520 MW gas-fired electric power plant under construction in Lewis County in the State of Washington.

Comment Date: April 28, 2003.

11. PJM Interconnection, L.L.C.

[Docket No. ER03–718–000]

Take notice that on April 7, 2003, PJM Interconnection, L.L.C. (PJM) submitted for filing an Emergency Energy Service Agreement Between Duquesne Light Company and PJM Interconnection, L.L.C. PJM requests waiver of the Commission's notice requirements to permit an effective date of May 1, 2003 for the agreement.

PJM states that copies of this filing were served upon Duquesne Light Company and each state electric utility regulatory commission in the PJM and Duquesne regions.

Comment Date: April 28, 2003.

12. New Athens Generating Company, LLC; New Covert Generating Company, LLC; New Harquahala Generating Company, LLC; New Millennium Power Partners, LLC

[Docket Nos. ER03–719–000; ER03–720–000; ER03–721–000; and ER03–722–000]

Take notice that on April 7, 2003, New Athens Generating Company, LLC, New Covert Generating Company, LLC, New Harquahala Generating Company, LLC and New Millennium Power Partners, LLC, submitted for filing, pursuant to Section 205 of the Federal Power Act, and part 35 of the Commission's regulations, an application for authorization to make sales, as power marketers of capacity, energy, and certain Ancillary Services at market-based rates; to reassign transmission capacity; and to resell firm transmission rights; to waive certain of the Commission's regulations promulgated under the FPA; and to grant certain blanket approvals under other such regulations.

Comment Date: April 28, 2003.

13. Texas-New Mexico Power Company

[Docket No. ER03–723–000]

Take notice that on April 8, 2003, Texas-New Mexico Power Company (TNMP) tendered for filing an Interconnection Agreement (Interconnection Agreement) between TNMP and Tri-State Generation and Transmission Association, Inc., (Tri-State). TNMP requests waiver of the Commission's prior notice requirement so that the Interconnection Agreement is made effective February 4, 2003.

TNMP states that copies of the filing were served upon Tri-State and the New Mexico Public Regulation Commission.

Comment Date: April 29, 2003.

14. Southern California Edison Company

[Docket No. ER03–724–000]

Take notice that on April 8, 2003, Southern California Edison Company (SCE) tendered for filing a Service Agreement for Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff and an Interconnection Facilities Agreement (Agreements) between SCE and WM Energy Solutions, Inc. (WMES). SCE respectfully requests the Agreements become effective on April 9, 2003.

SCE states that these Agreements specify the terms and conditions under which SCE will interconnect WMES's El Sorbrante Landfill Project (Project) to its electrical system and provide Distribution Service for up to 3.93 MW of power produced by the Project to the California Independent System Operator Controlled Grid.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and WMES.

Comment Date: April 29, 2003.

15. Aquila Piatt County Power L.L.C.

[Docket No. ER03–725–000]

Take notice that on April 8, 2003, Aquila Piatt County Power L.L.C. (Aquila Piatt), an indirect wholly owned subsidiary of Aquila, Inc., tendered for filing a rate schedule to engage in wholesale sales at market-based rates and a petition for waivers and blanket approvals under various regulations of the Commission. Aquila Piatt included in its filing a proposed code of conduct.

Comment Date: April 29, 2003.

16. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–727–000]

Take notice that on April 8, 2003, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) submitted for filing proposed revisions to the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No.1. The Midwest ISO submits that its proposed revisions are either (i) non-substantive in nature (*i.e.*, correct minor pagination errors and update the table of contents); (ii) viewed as necessary by certain Midwest ISO stakeholders given the fact that the provisions filed in the Resulting Company Tariff will not go into effect; or (iii) being made at the request of the Midwest ISO's Transmission Owners and other stakeholders.The Midwest ISO has requested an effective date of June 7, 2003.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO indicates that it will provide hard copies to any interested parties upon request.

Comment Date: April 29, 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 field 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. 03–9547 Filed 4–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Soliciting Comments

April 14, 2003.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement agreement.

b. *Project No.:* P–12379.

c. *Date filed:* March 24, 2003.

d. *Applicant:* Lake Dorothy Hydro, Inc.

e. *Name of Project:* Lake Dorothy Hydroelectric Project.

f. *Location:* On 1,804 acres administered by the Tongass National Forest, at Lake Dorothy on Dorothy Creek, near Juneau, Alaska. Township 42S, Range 69E and 70E, Copper River Meridian.

g. *Filed Pursuant to:* Rule 602 of the Commission's rules of practice and procedure, 18 CFR 385.602.

h. *Applicant Contact:* Mr. Corry V. Hildenbrand, President, Lake Dorothy Hydro, Inc., 5601 Tonsgard Court, Juneau, AK 99801–7201, (907) 463–6315; and Ms. Susan Tinney, Licensing Coordinator, S. Tinney Associates, Inc., P.O. Box 985, Lake City, CO 81235, (970) 944–1020.

i. *FERC Contact:* Michael H. Henry, E-mail—*mike.henry@ferc.gov* or telephone (503) 552–2762.

j. *Deadline for filing comments:* May 5, 2003. Reply comments due May 15, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. *Description of Filing:* The Alaska Department of Fish and Game filed the

Offer of Settlement on behalf of itself and Lake Dorothy Hydro, Inc.. The purpose of the Offer of Settlement concerns the resolution of project operation, fish passage, instream flow requirements and compensatory mitigation for potential impacts to aquatic resources in the Lake Dorothy watershed. The signatories ask the Commission to accept the Offer of Settlement and incorporate the Compensatory Terms of the Settlement Agreement into any license issued for the project.

l. A copy of the settlement agreement 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9556 Filed 4–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2496]

Eugene Water and Electric Board; Notice of Meeting

April 14, 2003.

On Thursday, April 24, 2003, in Leaburg, Oregon, Commission staff will hold an informational meeting on current and future activities at the Leaburg Walterville Project, FERC No. 2496.

Commission staff will discuss the embankment clearing, the pending recreation plan, and other compliance filings. Eugene Water and Electric Board (EWEB) will provide information about its current compliance activities and the status of future compliance filings. Commission and EWEB staff will be available to answer questions.

The informational meeting will take place at the Leaburg, Oregon Community Center from 7–9:30 p.m. on April 24, 2003. All interested persons are encouraged to attend.

Please direct any questions about this meeting to Heather Campbell at 202–502–6182 or June Morgan 202–502–6001.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9559 Filed 4–17–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0083; FRL–7298–1]

Compliance Requirement for Child-Resistant Packaging; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): Compliance Requirement for Child-Resistant Packaging (EPA ICR No. 0616.08, OMB Control No. 2070–0052). This is a request to renew an existing ICR that is currently approved and due to expire January 31, 2004. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPP–2003–0083, must be received on or before June 17, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: vogel.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide registrant who sells and distributes pesticide products to the general public in the United States. Potentially affected categories and entities may include, but are not limited to:

- Pesticide and other agricultural chemical manufacturing (NAICS 325320), e.g., Pesticide registrants who sell and distribute pesticide products to the general public in the United States.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Copies of this Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0083. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments,

access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

III. How Can I Respond to this Action?

A. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit III.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0083. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0083. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit III.A. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0083.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0083. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit II.A.

B. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's

electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does This Action Apply to?

EPA is seeking comments on the following ICR:

Title: Compliance Requirement for Child-Resistant Packaging.

ICR numbers: EPA ICR No. 0616.08, OMB Control No. 2070–0052.

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire January 31, 2004.

Abstract: This information collection program is designed to provide EPA with assurances that the packaging of pesticide products sold and distributed to the general public in the United States meets standards set forth by the Agency pursuant to FIFRA. Registrants must certify to the Agency that the packaging or device meets these standards. Responses to this collection are required in order to obtain pesticide registration. The authority for this information collection is pursuant to section 25 (c)(3) of FIFRA. Compliance regulations are contained in title 40 of the Code of Federal Regulations (CFR) part 157. CBI submitted to EPA in response to this information collection is protected from disclosure under FIFRA section 10.

V. What Are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, ''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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 853.4 hours. The following is a summary of the estimates taken From the ICR:

Respondents/affected entities: Pesticide registrants who sell and distribute pesticide products to the general public in the United States.

Estimated total number of potential respondents: 502.

Frequency of response: Per event.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 853.4.

Estimated total annual burden costs: $58,232.00.

VI. Are There Changes in the Estimates From the Last Approval?

Total respondent costs associated with this program rose from $55,019.20 to $58,232.00. Total Agency costs rose from $213,751.60 to $245,176.80. Changes to total costs associated with this program are due to the increase in labor rates, reflecting the most current estimates.

VII. What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: April 9, 2003.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–9485 Filed 4–17–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0017; FRL–7303–3]

Voluntary Cover Sheet for TSCA Submissions; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), EPA is seeking public comment on the following Information Collection Request (ICR): Voluntary Cover Sheet for TSCA Submissions, (EPA ICR No. 1780.03, OMB Control No. 2070–0156). This ICR involves a collection activity that is currently approved and scheduled to expire on February 29, 2004. The use of this information collection will enable the Agency more

easily to collect, identify, process, store, retrieve, and disseminate information on health and environmental risks associated with toxic chemicals. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2003–0017, must be received on or before June 17, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Ron Carlson, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8631; fax number: (202) 564–7480; e-mail address: carlson.ron@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you manufacture, process, use, import, or distribute in commerce chemical substances that are subject to reporting requirements under sections 4, 8(d), or 8(e) of the Toxic Substances Control Act (TSCA). Potentially affected entities may include, but are not limited to:

- Petroleum and Coal Products Manufacturing (NAICS 324), e.g., Petroleum Refineries, Petroleum Lubricating Oil and Grease Manufacturing, Asphalt Paving, Roofing and Saturated Materials Manufacturing, and Other Petroleum and Coal Products Manufacturing.
- Chemical Manufacturing (NAICS 325), e.g., Basic Chemical Manufacturing, Synthetic Dye and Pigment Manufacturing, Inorganic Dye and Pigment Manufacturing, Paint and Coating Manufacturing, and Adhesive Manufacturing.
- Petroleum and Petroleum Products Wholesalers (NAICS 42272), e.g., Petroleum and Petroleum Products Wholesalers (except Bulk Stations and Terminals).

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

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0017. 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 EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.*You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit the Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper

receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2003–0017. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2003–0017. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0017. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does This Action Apply to?

EPA is seeking comments on the following ICR:

*Title:*Voluntary Cover Sheet for TSCA Submissions.

ICR numbers: EPA ICR No. 1780.03, OMB Control No. 2070–0156.

ICR status: This ICR is currently scheduled to expire on February 29, 2004.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: TSCA requires industry to submit information and studies for existing chemical substances under sections 4, 6, and 8. Under normal reporting conditions, EPA receives thousands of submissions each year; each submission represents on average three studies. In addition, specific data call-ins can be imposed on industry.

As a follow-up to industry experience with a 1994 TSCA data call-in, the Chemical Manufacturers Association (CMA, now known as the American Chemistry Council (ACC)), the Specialty Organics Chemical Manufacturers Association (SOCMA), and the Chemical Industry Data Exchange (CIDX), in cooperation with EPA, took an interest in pursuing electronic transfer of TSCA summary data and of full submissions to EPA. In particular, ACC developed a standardized cover sheet for voluntary use by industry as a first step to an electronic future and to begin familiarizing companies with standard requirements and concepts of electronic transfer. This form is designed for voluntary use as a cover sheet for submissions of information under TSCA sections 4, 8(d), and 8(e). The cover sheet facilitates submission of information by displaying certain basic data elements, permitting EPA more easily to identify, log, track, distribute, review and index submissions, and to make information publicly available more rapidly and at reduced cost, to the mutual benefit of both the respondents and EPA.

Responses to the collection of information are voluntary. Respondents may claim all or part of a notice CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

III. What Are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, ''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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 0.5 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 964.

Estimated total number of potential respondents: Unknown.

Frequency of response: On occasion.

Estimated average number of responses for each respondent: 19.

Estimated total annual burden hours: 9,136 hours.

Estimated total annual burden costs: $703,435.

IV. Are There Changes in the Estimates From the Last Approval?

There is an increase of 8,221 hours (from 915 hours to 9,136 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This change reflects a net increase in the estimated number of submissions under TSCA sections 4, 8(d), and 8(e) for which the Voluntary TSCA Cover Sheet could be used, in particular a substantial increase in the estimated number of TSCA section 4 submissions. Since the use of the Voluntary TSCA Cover Sheet is a direct reflection of the number of submissions received under TSCA sections 4, 8(d), and 8(e), any change in the estimated numbers of submissions under those requirements will result in a parallel change in the burden hours associated with this information collection. This increase represents an adjustment.

V. What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: April 9, 2003.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–9624 Filed 4–17–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6639–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://epa.gov/complianc/nepa/.*

Weekly receipt of Environmental Impact Statements
filed April 7, 2003, through April 11, 2003,
pursuant to 40 CFR 1506.9.

EIS No. 030163, Draft EIS, SFW, CA, Programmatic EIS—San Francisco Estuary Invasive Spartina Project, Spartina Control Program to Preserve and Restore Ecological Integrity of the Estuary's Intertidal Habitats, Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, CA, comment period ends: June 2, 2003, contact: Mark Littlefield (916) 414–6581.

This document is available on the Internet at: *http://sacramento.fws.gov.*

EIS No. 030164, Final Supplement, COE, FL, PCS Phosphate—White Springs Mine Continuation Mining Operations, Proposes to Discharge Dredged/ Fill Material into 1,858 Acres of Jurisdictional Wetlands, Applications of ''Life of Mine'' Permits, Hamilton County, FL, wait period ends: May 19, 2003, contact: Richard Legere (352) 331–0732.

EIS No. 030165, Final EIS, COE, ND, Devils Lake Basin North Dakota Study, the Reduction of Flood Damages Related to the Rising Lake Levels and the Flood-Prone Areas Around Devils Lake and to Reduce the Potential for Natural Overflow Event, Sheyenne River and Red River of the North, ND, wait period ends:

May 19, 2003, contact: Robert Anfang (651) 290–5268.

EIS No. 030166, Final EIS, FHW, CA, CA–22/West Orange County Connection Project, Transportation Improvements between Interstate 605 and State Route 55, in the cities of Los Alamitos, Seal Beach, Garden Grove, Westminster, Santa Ana, and Orange, Orange County, CA, wait period ends: June 2, 2003, contact: Robert Cady (916) 498–5038.

EIS No. 030167, Final EIS, COE, TX, Corpus Christi Ship Channel Improvements Project, Commercial Navigation Improvements and Ecosystem Restoration, Corpus Christi and Nueces Bays, Nueces and San Patricio Counties, TX, wait period ends: May 19, 2003, contact: Carolyn Murphy (409) 766–3044.

EIS No. 030168, Final EIS, COE, FL, Lee County Beach Erosion Control Project, Shore Protection, Gasparilla and Estero Islands, Lee County, FL, wait period ends: May 19, 2003, contact: Yvonne Harberer (904) 232–1701.

EIS No. 030169, Draft Supplement, NOA, Atlantic Sea Scallop Fishery Management Plan (FMP), Amendment 10 is to Introduce Spatial Management of Adult Scallops, Essential Fish Habitat (EFH), from the Gulf of Maine and Georges Banks to Cape Hatteras, NC, comment period ends: July 16, 2003, contact: Paul J. Howard (978) 465–0492.

EIS No. 030170, Final EIS, AFS, WA, Quartzite Watershed Management Project, Watershed Management Activities including Vegetation Management, Riparian/Wetland Management and Road Management, Colville National Forest, Thomason Sherwood-Cottonwood Creek, Three Rivers Ranger District, Stevens County, WA, wait period ends: May 19, 2003, contact: Sherri Schwenke (509) 738–7000.

This document is available on the Internet at: *http://www.fs.fed.us/r6/colville/forest/projects/quartzite.html.*

EIS No. 030171, Draft EIS, AFS, UT, Prima East Clear Creek Federal No. 22–42 Gas Exploration Well, Application for Permit to Drill and (Surface Use Plan of Operations) Castle Valley Ridge, Ferron/Price Ranger District, Manti-La Sal National Forest, Carbon and Emery Counties, UT, comment period ends: June 2, 2003, contact: Karl Boyer (435) 637–2817.

Amended Notices

EIS No. 020474, Draft EIS, FHW, AK, South Extension of the Coastal Trail Project, To Extend the Existing Tony Knowles Coastal Trail from Kincaid Park through the Project Area to the Potter Weigh Station, COE section 10 and 404 permit, Municipality of Anchorage, Anchorage, Alaska, comment period ends: May 16, 2003, contact: Tim A. Haugh (907) 586–7418. Revision of FR notice published on 11/22/2002: CEQ comment period ending on 3/7/2003 has been extended to 5/16/2003.

EIS No. 030108, Final EIS, GSA, WI, Badger Army Ammunition Plant, Property Disposal, Implementation, Townships of Sumpter and Merrimac, Sauk County, WI, wait period ends: April 28, 2003, contact: Mark N. Lundgren (312) 353–0302. Revision of FR notice published on 3/21/2003: CEQ comment period ending 4/21/2003 has been extended to 4/28/2003.

Dated: April 15, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–9626 Filed 4–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIORNMENTAL PROTECTION AGENCY

[ER–FRL–6639–5]

Notice of Intent To Prepare an Environmental Impact Statement for the Comprehensive Port Improvement Plan Within the Port of New York (NY) and New Jersey (NJ)

AGENCY: U.S. Environmental Protection Agency (EPA), U.S. Army Corps of Engineers (USACE), and Federal Highway Administration (FHWA) acting as Federal co-lead agencies.

ACTION: Federal co-lead agencies submit this Notice of Intent to prepare an Environmental Impact Statement for the Comprehensive Port Improvement Plan (CPIP–EIS) that may be adopted as state or local equivalent documents. The CPIP–EIS will be prepared concurrently with a CPIP Plan (CPIP–Plan) for the Port of NY and NJ (Port); the CPIP–Plan will be prepared by a Consortium, consisting of the Port Authority of NY and NJ, the OMR/NJDOT, NYESDC, and NY City Economic Development Corporation (NYCEDC). The CPIP–Plan and CPIP–EIS will: seek to define economically viable and environmentally sound Port facility and associated transportation network improvement initiatives to the year 2060; consider separate, ongoing, and planned environmental enhancements to natural resources of the Port and associated transportation network; incorporate Green Port principles to the maximum extent practicable; evaluate, avoid, minimize, and mitigate adverse environmental effects.

Schedule: Scoping will begin in April 2003 with interviews and public announcements to encourage a large turnout for subsequent meetings which will follow in June 2003.

Six scoping meetings for the CPIP EIS are planned to solicit comments, to determine the scope of issues, and to identify significant issues related to the proposed action. Formal comments may be given at the scoping meetings and a court reporter will be available to record comments. Scoping will conclude 30 days after the final scoping meeting (about late September 2003).

Services: Meeting locations will be accessible to people with disabilities. People with special disability related needs should contact the NEPA Coordinator for the CPIP at the address or phone number below. Reading materials will be available at meetings and may be obtained in advance by contacting the NEPA Coordinator for the CPIP, or visiting *www.cpiponline.org*.

For further information about Scoping, or the CPIP–EIS process, please contact the NEPA Coordinator for the CPIP at: Lorne LaMonica, NEPA Coordinator for the CPIP, U.S. Environmental Protection Agency, Environmental Review Section, 25th Fl., 290 Broadway NY, NY 10007. Phone: 1–866–877–CPIP (2747); E-mail: *lamonica@cpipeis.com*.

For your information, the Federal Co-Lead agency contacts are listed below:

Dave Carlson, U.S. Environmental Protection Agency, Environmental Review Section, 25th Fl., 290 Broadway, NY, NY 10007.

Nancy J. Brighton, U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, Room 2146, NY, NY 10278–0090.

Richard E. Backlund, Federal Highway Administration, U.S. Department of Transportation, One Bowling Green, Room 428, NY, NY 10004–1415.

Summary Information

Authority—Authority for completion of the CPIP–EIS for each agency can be found at: EPA—Title 40 CFR part 6, FR: October 29, 1998, Number 209; USACE—33 U.S.C. 403, 33 U.S.C. 1344, and 33 U.S.C. 1413; FHWA—Title 23 CFR part 771; OMR/NJDOT—Executive Order (EO) No. 215 of 1989, 23 CFR Part 771.109, NJ CZM Rules, N.J.A.C. 7:7E; NYESDC—6 NYCRR PART 617 SEQR, ECL Sections 3–0301(1)(b), 3–0301(2)(m) and 8–0113.

Estimated Date of Draft EIS Release—Summer of 2004.

Purpose and Need for Action—The NY and NJ Harbor Navigation Study (HNS), prepared by the USACE in 1999, projected a substantial increase in the amount of containerized cargo destined for the Port over the period to 2060. The ability of existing Port facilities to handle future cargo volumes as forecast in the HNS indicates that the Port facilities and associated transportation network may need to make future additional improvements, beyond those currently planned, to efficiently manage projected cargo over that period. Other studies concerning the Port, prepared by various federal, state and local stakeholders, have identified plans to increase Port capacity and have highlighted a number of environmental issues of concern to the Port and regional area. The CPIP-Plan will consider the Port region as a complete system, and will seek to develop a port-wide plan that is economically efficient and environmentally sustainable, and considers environmental restoration efforts in the region; the CPIP–EIS will evaluate potential impacts of various Federal, state, and local port and transportation improvement strategies to achieve this.

Study Area—Study areas for the analysis of impacts of port and transportation improvement alternatives at existing, and potentially new, port facilities will encompass the port sites' premises and vicinities, and, at a minimum, the Port District.

Alternatives—The CPIP–EIS will evaluate a variety of alternatives, including, but not limited to: the no-action alternative; facility productivity and efficiency enhancements and improvements; facility expansion; new terminal facilities sited either in uplands or through placement of fill in waters and wetlands; and combinations of these alternatives. Consideration of alternatives will include identification and evaluation of improvements to the transportation infrastructure serving the Port. The CPIP–EIS will analyze direct, indirect and cumulative impacts of each alternative.

Scoping—Comments should focus on social, economic, or environmental issues to be evaluated; and on identifying the alternatives that may achieve both economic and environmental goals.

Public Involvement—Activities may include stakeholder and community meetings, open houses with technical staff, workgroups/workshops, a web site, and project fact sheets and newsletters.

Issues for Analysis—The CPIP–EIS will evaluate potential changes to the social, economic, and physical environment that would result with the defined project alternatives, including: land use and zoning; socioeconomics; parklands; historic and archeological resources; aesthetics; traffic and transportation; air quality; noise; navigation; floodplains and hydrology; topography, geology, and soils; wetlands and special aquatic sites; wildlife and waterfowl refuges; water quality; groundwater and sole source aquifers; aquatic and terrestrial ecology; endangered and threatened species; resource contamination and hazardous waste sites; and environmental justice. Impacts will be evaluated both for the construction period and for the long-term operation period of each alternative. Measures to mitigate any significant adverse impacts will be identified.

Responsible Official—

Dated: March 11, 2003.

Anne Norton Miller,

Director, OFA.

[FR Doc. 03–9625 Filed 4–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7485–1]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC).

The National and Governmental Advisory Committees advise the Administrator of the EPA in her capacity as the U.S. Representative to the Council of the North American Commission for Environmental Cooperation. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, Pub. L. 103–182 and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The Committees are responsible for providing advice to the U.S. Representative on a wide range of strategic, scientific, technological, regulatory and economic issues related to implementation and further elaboration of the NAAEC. The National Advisory Committee consists of 12 representatives of environmental groups and non-governmental organizations, business and industry, and educational institutions. The Governmental Advisory Committee consists of 12 representatives from state, local and tribal governments.

The Committees are meeting to develop recommendations to the Administrator of EPA on priority issues that the U.S. should address during the Commission for Environmental Cooperation Council of Ministers Session in June, 2003.

DATES: The Committees will meet on Thursday, May 8, 2003 from 9 a.m. to 6 p.m., and on Friday, May 9, 2003 from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Washington Terrace Hotel, 1515 Rhode Island Avenue NW., Washington, DC. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Oscar Carrillo, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, at (202) 233–0072.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Oscar Carrillo at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: April 9, 2003.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 03–9623 Filed 4–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7485–2]

Arsenic Treatment Demonstrations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (USEPA) plans to conduct the second phase of a demonstration program on the treatment (reduction and/or removal) of arsenic in drinking water. The notice on the first phase of the program was published on

March 28, 2002 (67 FR 14951). The USEPA recently promulgated a standard that limits arsenic concentrations in drinking water to 10 ug/l. Through this demonstration program, the USEPA intends to identify and evaluate the ability of commercially available technologies and engineering or other approaches to cost effectively meet the new standard in small water systems (<10,000 customers). Through this notice, the USEPA is inviting the public at large, governmental and regulatory agencies, public health agencies, and drinking water utilities to identify small water utilities that may be interested in hosting a demonstration at their facility. Such utilities should be those which will require treatment to comply with the new arsenic standard. Unless it is desired to update the information submitted earlier, utilities that responded to the March 28, 2002 Notice do not need to resubmit. Those utilities will be included automatically in the second phase. This notice does not constitute a procurement.

DATES: Please submit the requested information by July 15, 2003.

ADDRESSES: Details on participation in this study can be found at: *http://www.epa.gov/ORD/NRMRL/arsenic/.*

FOR FURTHER INFORMATION CONTACT: Robert Thurnau, National Risk Management Research Laboratory, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, Ohio, 45268, telephone (513) 569–7504.

Dated: April 2, 2003.

Lee A. Mulkey,

Acting Director, National Risk Management Research Laboratory.

[FR Doc. 03–9622 Filed 4–17–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 5, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Jeffrey L. Gerhart, Newman Grove, Nebraska; to acquire voting shares of First Newman Grove Bankshares Corporation, Newman Grove, Nebraska, and thereby indirectly acquire voting shares of The First National Bank of Newman Grove, Newman Grove, Nebraska.

Board of Governors of the Federal Reserve System, April 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–9652 Filed 4–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 15, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Central Georgia Banking Company, Cochran, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Cochran, Cochran, Georgia.

Board of Governors of the Federal Reserve System, April 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–9651 Filed 4–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 2003.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Sleepy Hollow Bancorp, Inc., Sleepy Hollow, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Sleepy Hollow Bank, Sleepy Hollow, New York.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Total Bancshares Corporation, Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of TotalBank, Miami, Florida.

C. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. PNB Bancshares, Inc., Pekin, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Pekin National Bank, Pekin, Illinois.

D. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. The Farmers State Bank of Fort Morgan Colorado Employee Stock Ownership Plan, Fort Morgan, Colorado; to acquire up to 38 percent of the voting shares of F.S.B, Bancorporation of Fort Morgan, Fort Morgan, Colorado, and thereby indirectly acquire voting shares of Farmers State Bank, Fort Morgan, Colorado.

Board of Governors of the Federal Reserve System, April 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–9653 Filed 4–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting Notice

TIME AND DATE: 9 a.m. (EDT), April 28, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of minutes of the March 31, 2003, Board member meeting.
2. Executive Director's report, including the following items:
   a. Legislative report,
   b. Investment report, and
   c. Participation information.
3. Presentation of audited financial statements by Ernst and Young.
4. Status of new recordkeeping system.

Parts Closed to the Public

5. Discussion of litigation matters.
6. Discussion of personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–9736 Filed 4–16–03; 2:07 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–242, CMS–1763, CMS–4040–SP, CMS–10069, CMS–R–52, CMS–R–30]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Refinement of RHC Certification and QAPI and Supporting Regulations in 42 CFR 491.8 and 491.11.

Form No.: CMS–R–242 (OMB# 0938–0792).

Use: This collection contains information collection requirements concerning requests for additional waivers of staffing requirements and documentation of quality assessment and performance improvement programs.

Frequency: Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 3,528.

Total Annual Responses: 3,573.

Total Annual Hours: 3,663.

2. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Request for Termination of Premium+Hospital and/or Supplementary Medical Insurance.

Form No.: CMS–1763 (OMB# 0938–0025).

Use: The CMS–1763 is used by beneficiaries to request voluntary termination from Premium Hospital Insurance (premium-HI) and/or Supplementary Medicare Insurance (SMI).

Frequency: One time only.

Affected Public: Individuals or Households, Federal Government, State, local, and tribal government.

Number of Respondents: 14,000.

Total Annual Responses: 14,000.

Total Annual Hours: 5,833.

3. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Request for Enrollment in Supplemental Medicare Insurance and Supporting Regulations in 42 CFR 407.10 and 401.11.

Form No.: CMS–4040 and 4040–SP (OMB# 0938–0245).

Use: The CMS 4040 is used to establish entitlement to Supplemental Medical Insurance (Part B) by beneficiaries not eligible under Part A of the Title XVIII or Title II of the Social Security Act. The CMS–4040SP is also included in this renewal.

Frequency: One time only.

Affected Public: Individuals or Households, Federal Government, State, local, and tribal government.

Number of Respondents: 10,000.

Total Annual Responses: 10,000.

Total Annual Hours: 2,500.

4. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Medicare Waiver Demonstration Application.

Form No.: CMS–10069 (OMB# 0938–0880).

Use: The Medicare Waiver Demonstration Application will be used to collect standard information needed to implement Congressionally mandated

and administration high priority demonstrations. The application will be used to gather information about the characteristics of the applicant's organization, benefits, and services they propose to offer, success in operating the model, and evidence that the model is likely to be successful in the Medicare program. The standard application will be used for all waiver demonstrations and will reduce the burden on applicants, provide for consistent and timely information collections across demonstration, and provide a user-friendly format for respondents.

Frequency: On Occasion.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Number of Respondents: 75.

Total Annual Responses: 75.

Total Annual Hours: 1600.

5. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Conditions of Coverage of Suppliers of End Stage Renal Disease (ESRD).

Form No.: CMS–R–52 (OMB# 0938–0386).

Use: This package is needed to encourage proper distribution and effective utilization of ESRD treatment sources while maintaining and improving the efficient delivery of care by physicians and dialysis facilities.

Frequency: Annually.

Affected Public: Business or other for-profit and Federal Government.

Number of Respondents: 4,297.

Total Annual Responses: 4,297.

Total Annual Hours: 148,785.

6. *Type of Information Collection Request:* Revision of a currently approved collection.

Title of Information Collection: Information Collection Requirements in the Hospice Conditions Coverage. The following regulations are affected: 42 CFR 418.22; 418.24; 418.28; 418.56(b), (e)(1), (e)(3); 418.58; 418.70(e); 418.83; 418.96(b); and 418.100(b).

Form No.: CMS–R–30 (OMB# 0938–0302).

Use: Establishes standards for hospices that wish to participate in the Medicare program. The regulations establish standards for eligibility, reimbursement standards and procedure, and delineate conditions that hospices must meet to be approved for participation in Medicare.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 2,316.

Total Annual Responses: 2,316.

Total Annual Hours: 5,981,427.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 10, 2003.

Dawn Willinghan,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–9548 Filed 4–17–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Tribal Temporary Assistance for Needy Families Quarterly Financial Report.

OMB No.: New Request.

Description: The form provides specific data regarding expenditures and provides a mechanism for Tribes to request grant awards and certify the availability of State matching funds. Failure to collect this data would seriously compromise ACF's ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress. The following citations should be noted in regards to this collection: 45 CFR 286.255.

Respondents: Tribal TANF Agencies.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196TT	20	4	2	160

Estimated Total Annual Burden Hours: 160.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 15, 2003.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 03–9639 Filed 4–17–03; 8:45 am]

BILLING CODE 4104–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03E–0031]

Determination of Regulatory Review Period for Purposes of Patent Extension; VFEND

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VFEND and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product VFEND (voriconaxole). VFEND is indicated for use in the treatment of the following fungal infections: Invasive *aspergillosis* and serious fungal infections caused by *scedosporium apiospermum* and *fusarium spp.*, including *fusarium solani*, in patients intolerant of or refractory to other therapies. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for VFEND (U.S. Patent No. 5,567,817) from Pfizer, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 4, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of VFEND represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VFEND is 2,452 days. Of this time, 1,898 days occurred during the testing phase of the regulatory review period, while 554 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* September 8, 1995. The applicant claims September 27, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 8, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* November 17, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for VFEND (NDA 21–266) was initially submitted on November 17, 2000.

3. *The date the application was approved:* May 24, 2002. FDA has verified the applicant's claim that NDA 21–266 was approved on May 24, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 945 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written comments and ask for a redetermination by June 17, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 15, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any mailed information to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–9577 Filed 4–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1248]

Determination of Regulatory Review Period for Purposes of Patent Extension; TIKOSYN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TIKOSYN and is publishing this notice of that determination as required by law. FDA has made the determination

because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product TIKOSYN (methanesulfonamide). TIKOSYN is approved for the following indications: (1) Maintenance of normal sinus rhythm (delay in time to recurrence of atrial fibrillation/atrial flutter (AF/AFl)) in patients with AF/AFl of greater than 1 week duration who have been converted to normal sinus rhythm; and (2) conversion of AF/AFl to normal sinus rhythm. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TIKOSYN (U.S. Patent No. 4,959,366) from Pfizer, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 26, 2000, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of TIKOSYN represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TIKOSYN is 3,350 days. Of this time, 2,778 days occurred during the testing phase of the regulatory review period, while 572 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: August 1, 1990. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 1, 1990.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: March 9, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for TIKOSYN (NDA 20–931) was initially submitted on March 9, 1998.

3. *The date the application was approved*: October 1, 1999. FDA has verified the applicant's claim that NDA 20–931 was approved on October 1, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,827 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 17, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 15, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (see **ADDRESSES**). Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–9578 Filed 4–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, In Vitro Antiviral Screening Program Part E: ''BK Virus''.

Date: May 7, 2003.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Vassil St. Georgiev, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural

Activities, NIAID/NIH/DHHS, Room 2102, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496–2550, *vg8q@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9541 Filed 4–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Loan Repayment Proposals.

Date: May 13, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS).

Dated: April 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9542 Filed 4–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Database for Aging Primate.

Date: April 25, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Arthur D. Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9543 Filed 4–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Interactive Web-Based Networking.

Date: May 9, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1178, *benxu1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9544 Filed 4–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Use of Hydroxyurea Alone and in Combination with dNTP Competitors for Blocking Reverse Transcriptase Dependent Viruses

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in:

(1) U.S. Patent No. 6,194,390, issued Feb. 27, 2001, entitled ''Procedure to block the replication of reverse transcriptase dependent viruses by the use of inhibitors of deoxynucleotides synthesis'' (E–157–1993/7);

(2) U.S. Patent No. 6,046,175, issued April 4, 2000, entitled ''Procedure to block the replication of reverse transcriptase dependent viruses by the use of inhibitors of deoxynucleotides synthesis'' (E–157–1993/1);

(3) U.S. Patent No. 6,093,702, issued July 25, 2000, entitled ''Mixtures of dideoxynucleosides and hydroxycarbamide for inhibiting retroviral spread'' (E–157–1993/4);

(4) U.S. Patent No. 5,736,526, issued April 7, 1998, entitled ''Mixtures of DDI and D4T with hydroxycarbamide for inhibiting retroviral replication'' (E–157–1993/5);

(5) U.S. Patent No. 5,521,161, issued May 28, 1996, entitled ''Method of treating HIV in humans by administration of ddI and hydroxycarbamide'' (E–157–1993/2);

(6) U.S. Patent No. 5,736,527, issued April 08, 1998, entitled ''Method of treating HIV in humans by administration of ddI and hydroxycarbamide'' (E–157–1993/6);

(7) PCT/US94/05515 filed May 17, 1994, entitled ''Procedure to block the replication of reverse transcriptase dependent viruses by the use of inhibitors of deoxynucleotides synthesis'' (E–157–1993/1), National Stage filed May 17, 1994: in Canada application No. 2163456, in EPO application No. 94918016.0, in Japan application No. 518466/94, in Australia Patent No. 685128, issued April 30, 1998;

(8) PCT/US95/00153 filed Dec. 20, 1994, entitled ''Method of treating HIV in humans by administration of ddI and hydroxycarbamide'' (E–157–1993/2), National Stage filed Dec. 20, 1994: in Canada Patent No. 2179627, issued Feb. 22, 2000, in EPO Patent No. 0735890, issued April 17, 2002, in South Africa Patent No. 94/9219, issued Oct. 25, 1995, in Taiwan Patent No. NI–080011, issued Dec. 03, 1996, in Australia Patent No. 718325, issued July 27, 2000, OAIPO Patent Application No. 60849, in Brazil patent application No. PI1100041–4, in Mexico patent application No. 9409706 to Research Institute for Genetic and Human Therapy (RIGHT), having a place of business in Washington, DC. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before June 17, 2003 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Sally Hu, Ph.D., M.B.A., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; E-mail: *hus@od.nih.gov;* Telephone: (301) 435–5606; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The subject inventions provide for formulations and methods for inhibiting replication of reverse transcription dependent viruses in animals cells comprising administering a compound that depletes the intracellular pool of deoxyribonucleoside phosphate (e.g. hydroxyurea), and further comprising administering a compound that serves to inhibit replication of the virus by terminating DNA chain elongation (e.g. DDI).

The field of use may be limited to development of drugs of hydroxyurea alone and in combination with dNTP competitors for blocking reverse transcriptase dependent viruses, including HIV.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 10, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–9546 Filed 4–17–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program

The National Toxicology Program (NTP) Center for the Evaluation of Risks to Human Reproduction (CERHR) Announces the Future Evaluations of Fluoxetine Hydrochloride (Prozac®; Sarafen™, CAS RN 54910–89–3) and Acrylamide (CAS RN 79–06–1), Requests Public Comments on These Chemicals, and Solicits the Nominations of Scientists Qualified to Serve on Expert Panels Evaluating Fluoxetine Hydrochloride and Acrylamide.

Summary: The CERHR plans to conduct an expert panel evaluation of fluoxetine hydrochloride and a separate expert panel evaluation of acrylamide. The exact dates for these expert panel meetings are not yet set, but the meetings are tentatively planned for 2003 and early 2004. Fluoxetine hydrochloride will be evaluated first. Additional details about the meetings, including the dates and locations, will be published in future **Federal Register** notices and posted on the NTP Web site (*http://ntp-server.niehs.nih.gov*).

The CERHR will convene expert panels to evaluate the reproductive and developmental toxicities of fluoxetine hydrochloride and acrylamide. For each of these meetings, the expert panel will consist of approximately 12 scientists, selected for their scientific expertise in various aspects of reproductive and developmental toxicology and other relevant areas of science. The expert panel meetings will be open to the public with time scheduled for oral public comment.

Evaluation of Fluoxetine Hydrochloride

Fluoxetine hydrochloride (Prozac®; Sarafem™; CAS RN 54910–89–3), an antidepressant, is a widely prescribed drug in the United States. The CERHR selected fluoxetine hydrochloride for evaluation because of (1) numerous reproductive and developmental studies in laboratory animals and humans, (2) human exposure information, and (3) changing prescription patterns. Fluoxetine hydrochloride, under the name Sarafem™, is now being

prescribed to treat premenstrual dysphoric disorder (PMDD), potentially increasing the number of exposures for women of childbearing age. Further, FDA recently approved Sarafem™ for use in 7–17-year-olds thereby increasing exposures of children. CERHR anticipates holding the expert panel evaluation in late 2003.

Evaluation of Acrylamide

Acrylamide (CAS RN 79–06–1) is used in the production of polyacrylamide, which is used in water treatment, pulp and paper production, and mineral processing. It is used in the synthesis of dyes, adhesives, contact lenses, soil conditioners, and permanent press fabrics and in molecular biology procedures such as electrophoresis. Acrylamide is a neurotoxicant and in animal studies has been shown to be a carcinogen, germ cell mutagen, and reproductive toxicant. The CERHR selected acrylamide for expert panel evaluation because of recent public concern for human exposures through its presence in starchy foods treated at high temperatures, *e.g.*, french fries and potato chips. In addition, recent data are available on occupational exposure, bioavailability, and reproductive toxicity. It is anticipated that the expert panel evaluation on acrylamide will occur in 2004.

Request for Public Input

The CERHR invites input from the public and other interested parties on fluoxetine hydrochloride and acrylamide, including toxicology information from completed and ongoing studies, information on planned studies, and information about current production levels, human exposure, use patterns, and environmental occurrence. Information and comments should be forwarded to the CERHR at P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709 (mail), (919) 541–3455 (phone), (919) 316–4511 (fax), or *shelby@niehs.nih.gov* (e-mail). Information and comments received by July 17, 2003 will be made available to the CERHR staff and the expert panel for consideration in the evaluation and posted on the CERHR Web site.

The CERHR also invites nominations of qualified scientists to serve on the expert panel for the fluoxetine hydrochloride evaluation and the acrylamide evaluation. Panelists are primarily drawn from the CERHR Expert Registry and/or the nomination of other scientists who meet the criteria for listing in that registry that include: formal academic training and experience in a relevant scientific field, publications in peer-reviewed journals, membership in relevant professional societies, certification by an appropriate scientific board or other entities, and participation in similar committee activities. All panel members serve as individual experts in their specific areas of expertise and not as representatives of their employers or other organizations. Scientists on the expert panel will be selected to represent a wide range of expertise, including developmental toxicology, reproductive toxicology, epidemiology, general toxicology, pharmacokinetics, exposure assessment, and biostatistics. Nominations received by July 17, 2003 will be considered for the fluoxetine hydrochloride and acrylamide panels and for inclusion in the CERHR Expert Registry. Nominations should be forwarded to the CERHR at the address given above.

Background Information About the CERHR

The NTP established the NTP CERHR in June 1998 (**Federal Register**, December 14, 1998 (Volume 63, Number 239, page 68782)). The CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. Expert panels conduct scientific evaluations of agents selected by the CERHR in public forums.

Information about CERHR and its process for nominating agents for review or scientists for its expert registry can be obtained from its Home page (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (contact information provided above). The CERHR selects chemicals for evaluation based upon several factors, including production volume, extent of human exposure, public concern, and published evidence of reproductive or developmental toxicity.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process was published in the **Federal Register** notice July 16, 2001 (Volume 66, Number 136, pages 37047–37048) and is available on the CERHR Web site under ''About CERHR'' or in printed copy from the CERHR.

Dated: April 9, 2003.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 03–9545 Filed 4–17–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08–03–016]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. The meeting will be open to the public.

DATES: The next meeting of LMRWSAC will be held on Tuesday, May 6, 2003, from 9 a.m. to 12 p.m. This meeting may adjourn early if all business is finished. Requests to make oral presentations or submit written materials for distribution at the meeting should reach the Coast Guard on or before April 30, 2003. Requests to have a copy of your material distributed to each member of the committee in advance of the meeting should reach the Coast Guard on or before April 25, 2003.

ADDRESSES: The meeting will be held in the Crescent City Room Suite 1830 at the World Trade Center Building, 2 Canal Street, New Orleans, Louisiana. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: LTJG Matt Dooris, Committee Administrator, telephone (504) 589–4251, Fax (504) 589–4241.

Written materials and requests to make presentations should be mailed to Commanding Officer, Marine Safety Office New Orleans, Attn: LTJG Dooris, 1615 Poydras Street, New Orleans, LA 70112.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC). The agenda includes the following:

(1) Introduction of committee members.

(2) Remarks by CAPT R. W. Branch, Executive Director.

(3) Approval of the November 12, 2002 minutes.

(4) Old Business:

(a) Captain of the Port status report.

(b) VTS update report.

(c) PORTS update report.

(5) New Business.
(6) Next meeting.
(7) Adjournment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Committee Administrator no later than April 30, 2003. Written material for distribution at the meeting should reach the Coast Guard no later than April 30, 2003. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Committee Administrator no later than April 25, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Committee Administrator at the location indicated under **ADDRESSES** as soon as possible.

Dated: March 8, 2003.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–9649 Filed 4–17–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14888]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: A subcommittee of the Merchant Marine Personnel Advisory Committee (MERPAC) will meet to discuss a specific task statement relating to the training of merchant-marine personnel. MERPAC advises the Secretary of the Department of Homeland Security on matters relating to the training, qualifications, licensing, certification, and fitness of seamen serving in the U.S. merchant marine. All meetings will be open to the public.

DATES: The MERPAC subcommittee will meet on Wednesday, April 30, 2003, and on Thursday, May 1, 2003, from 9 a.m. to 5 p.m. These meetings may adjourn early if all business is finished. Requests to make oral presentations, written material for distribution, and requests for distribution of this material all should reach the Coast Guard on or before April 23, 2003.

ADDRESSES: MERPAC will meet on both days in Room FOB–90 of the Old Federal Building located at 909 1st Avenue, Seattle, WA 98104. Further directions regarding the location of the Old Federal Building may be obtained by contacting the Property Management Office at (206) 220–5055. Send written material and requests to make oral presentations to Commander Brian J. Peter, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. We request that members of the public who plan to attend this meeting notify Mr. Mark Gould at 202–267–6890 or by e-mail at *mgould@comdt.uscg.mil* so that he may notify building security officials. In order to gain entry to the Old Federal Building, you will be required to show a valid Federal or State picture identification card. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Brian J. Peter, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–6890, fax 202–267–4570, or the e-mail address under **ADDRESSES.**

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Agenda of Meetings on April 30 and May 1, 2003:

The subcommittee will meet to discuss Task Statement 36: Recommendations on a Training Program for Officers in Charge of an Engineering Watch (OICEW) Coming Up Through the Hawsepipe. The subcommittee will develop recommendations and a proposed training program to be used by a mariner entering the maritime industry after August 1, 1998, who participates in an approved program of study, other than a State or Federal maritime academy. The recommendations and proposed training program will be forwarded to the full MERPAC for consideration and possible adoption at the next regular meeting.

Procedural

Both meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, your request should reach the Executive Director no later than April 23, 2003. Written material for distribution at a meeting should reach him no later than April 23, 2003. If you would like a copy of your material distributed to each member of the subcommittee in advance of the meeting, please submit 25 copies to him no later than April 23, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: April 8, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03–9648 Filed 4–17–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3185–EM]

Colorado; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Colorado (FEMA–3185–EM), dated April 9, 2003, and related determinations.

EFFECTIVE DATE: April 9, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 9, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Colorado, resulting from the record/near record snow on March 17–20, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency

Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of Colorado.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 72 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justin Demello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Colorado to have been affected adversely by this declared emergency:

Adams, Arapahoe, Boulder, Broomfield, Clear Creek, Custer, Denver, Douglas, Elbert, El Paso, Fremont, Gilpin, Grand, Huerfano, Jackson, Jefferson, Larimer, Las Animas, Park, Summit, Teller, and Weld Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 72 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–9584 Filed 4–17–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3173–EM]

New York; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of New York, (FEMA–3173–EM), dated February 25, 2003, and related determinations.

EFFECTIVE DATE: April 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of February 25, 2003:

Broome and Oneida Counties for emergency protective measures (Category B) under the Public Assistance program for an additional 48 hours of assistance (already designated for 48 hours of assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–9583 Filed 4–17–03; 8:45 am]

BILLING CODE 6718–02–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1453–DR]

Ohio; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio, (FEMA–1453–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 14, 2003:

Ross County for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–9581 Filed 4–17–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1455–DR]

West Virginia; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1455–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the

catastrophe declared a major disaster by the President in his declaration of March 14, 2003:

Brooke, Hancock, Hardy, Marion, Marshall, Monongalia, Ohio, Pendleton, Taylor, and Tucker Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

Harrison County for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours (already designated for Individual Assistance).

Wetzel County for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–9582 Filed 4–17–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–18]

Notice of Submission of Proposed Information Collection to OMB: Pre-Foreclosure Sales Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 19, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0464) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Pre-Foreclosure Sales Program.

OMB Approval Number: 2502–0464.

Form Numbers: HUD–90035, HUD–90036, HUD–90038, HUD–90045, HUD–90041, HUD–90051, HUD–90052.

Description of the Need for the Information and its Proposed Use: The respondents are lenders, counselors, and homeowners who are attempting to sell their properties prior to foreclosure. The information collection is a record of the process, from the borrower's application to participate in the program and the lender's approval, to the Department's review and approval of the specifics of the sale. Homeowner's participating in the program must also receive housing counseling and provide confirmation of that counseling.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	23,000	0.7		0.4		7,000

Total Estimated Burden Hours: 7,000.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 11, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–9553 Filed 4–17–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–16]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: April 18, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 10, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–9257 Filed 4–17–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit application.

SUMMARY: The following applicant has applied for a scientific research permit to conduct certain activities with endangered species pursuant to sections 10(a)(1)(A) and 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written comments on this permit application must be received on or before May 19, 2003.

ADDRESSES: Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, Regional Permits Coordinator, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Permit Number TE069282

Applicant: Theresa Sydney Burke

The applicant requests a permit to take (capture, handle, and harass) the Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), and Virginia big-eared bat (*Corynorhinus townsendii viginianus*) throughout the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The scientific research is aimed at enhancement of survival of the species in the wild.

Documents and other information submitted with this application are available for review by any party who requests a copy from the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, *peter_fasbender@fws.gov,* telephone (612) 713–5343, or FAX (612) 713–5292. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents. Please refer to the respective permit number when submitting comments.

Dated: March 31, 2003.

Robert J. Krska,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 03–9572 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Programmatic Environmental Impact Statement/Environmental Impact Report for the San Francisco Estuary Invasive Spartina Project: Spartina Control Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service (Service) announces availability of the Draft Programmatic Environmental Impact Statement/Environmental Impact Report (Draft EIS/R) for the San Francisco Estuary Invasive Spartina Project: Spartina Control Program. The Draft EIS/R will be available for public comment for a period of 45 days after publication of this Notice of Availability in the **Federal Register**. The Service and the California State Coastal Conservancy jointly prepared the Draft EIS/R to address environmental impacts and benefits of alternatives for the Spartina Control Program and provide for early-stage public involvement, as required under the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). The Spartina Control Program would attempt to eradicate four species of non-native, invasive perennial cordgrass (genus *Spartina*) in the San Francisco Bay Estuary (Estuary), including the San Francisco Bay National Wildlife Refuge.

DATES:

Public meetings will be held:

1. April 22, 2003, 6 p.m. to 9 p.m., Fremont, California.

2. April 23, 2003, 6 p.m. to 9 p.m., Oakland, California.

The public comment period for the Draft EIS/R will end June 2, 2003.

ADDRESSES:

Meeting locations are:

1. Don Edwards National Wildlife Refuge, 1 Marshlands Road, Fremont, CA 94536.

2. Association of Bay Area Governments Offices, Room 171, Oakland, CA 94607.

Mail comments and requests for copies of the Draft EIS/R to Mr. Wayne White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825. Copies of the Draft EIS/R can also be downloaded from the Fish and Wildlife Service Web site at *http://sacramento.fws.gov.* Comments and requests can alternatively be sent via electronic mail to *spartina@fws.gov,* or via facsimile to (916) 414–6713.

The California State Coastal Conservancy is located at 1330 Broadway, 11th Floor, Oakland, CA 94612.

FOR FURTHER INFORMATION CONTACT:

NEPA Information: Mr. Mark Littlefield, Sacramento Fish and Wildlife Office, (916) 414–6600.

CEQA Information: Ms. Maxene Spellman, California State Coastal Conservancy, (510) 286–0332.

SUPPLEMENTARY INFORMATION: Comments must be received by the end of the comment period to be considered during preparation of the Final EIS/R and finalization of the Spartina Control Program. All comments, including names and addresses, will become part of the public record.

The programmatic EIS/R analyzes potential effects of implementing Spartina treatment methods at a generalized, region-wide program level rather than a detailed, individual project level. The purpose of the Spartina Control Program is to arrest and reverse the spread of invasive, non-native cordgrasses (*S. alterniflora, S. anglica, S. densiflora,* and *S. patens*) in the Estuary to preserve and restore the ecological integrity of its intertidal habitats and estuarine ecosystem.

The Estuary supports a diverse array of native plants and animals, including several Federal and State listed species. Many non-native species of plants and animals have been introduced to the Estuary, and some now threaten to cause fundamental changes in the structure, function, and ecological value of the Estuary's tidal lands. In recent

decades, populations of non-native cordgrasses were introduced to the Estuary and rapidly began to spread. Although valuable in their native settings, these introduced cordgrasses are highly invasive in new environments and frequently become the dominant plant species. In particular, the non-native cordgrass species Atlantic smooth cordgrass (*S. alterniflora*) and its hybrids, formed when this species crosses with native Pacific cordgrass (*S. foliosa*), are now threatening the ecological balance of the Estuary. In the Estuary, Atlantic smooth cordgrass is likely to choke tidal creeks, dominate newly restored tidal marshes, impair thousands of acres of existing shorebird habitat, and eventually cause extinction of the native Pacific cordgrass.

Once established in the Estuary, non-native invasive cordgrass could rapidly spread to other estuaries along the California coast through seed dispersal on the tides. Non-native invasive cordgrasses are spreading rapidly in the Estuary and currently dominate 500 acres of mudflats and tidal marshes on State, Federal, municipal, and private lands. The Spartina Control Program proposes to implement a coordinated, region-wide eradication program, consisting of a number of on-the-ground treatment techniques that should stave off this invasion. The Spartina Control Program will be focused within the nearly 40,000 acres of tidal marsh and 29,000 acres of tidal flats that compose the shoreline areas of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, Sonoma, and Sacramento counties.

At this time, three alternatives have been developed for full analysis: (1) Regional eradication using all available control methods in an integrated vegetation management (IVM) approach, (2) regional eradication using only non-chemical control methods in a program of IVM, and (3) no action (continued limited, regionally uncoordinated treatment). A fourth alternative, no control program at all, did not meet the purpose and need for the action and was removed from further consideration.

Alternatives 1 and 2 would employ a variety of manual and mechanical treatment methods including: (a) Hand-pulling and manual excavation; (b) mechanical excavation and dredging; (c) pruning, burning, and mowing; (d) smothering (blanketing); and (e) drowning and draining cordgrass. In addition to these methods, Alternative 1, the Preferred Alternative, would also employ application of herbicides in suitable situations. Both Alternatives 1 and 2 would incorporate a modified IVM approach by: (a) Using all available information regarding the estuarine ecosystem and cordgrass physiology and ecology; (b) combining this with the awareness of likely economic, ecological, and sociological consequences of the cordgrass invasion; (c) implementing a program that is effective and economical; and (d) protecting public and environmental health.

Because NEPA and CEQA have different requirements for some compliance elements, the Draft EIS/R was prepared to comply with whichever law's requirements were most stringent. The Draft EIS/R also identifies necessary permits and approvals from local, State, and Federal agencies, and includes supporting environmental documentation for the permits. Efforts will be regionally coordinated with appropriate natural resource agencies in order to develop a program that minimizes disturbance to sensitive habitats and species. The Final EIS/R will respond to comments received during public review of the Draft EIS/R and identify the Spartina Control Program alternative to be implemented. A copy of the Final EIS/R will be made available to all who commented on the Draft EIS/R and anyone requesting a copy.

(Authority: National Environmental Policy Act (42 U.S.C. 4321 *et seq.*); Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR 1500–1508)).

Mary Ellen Mueller,

Acting Deputy Manager, California/Nevada Operations Office.

[FR Doc. 03–8196 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Northeast Regional Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Northeast Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION**.

DATES: The Northeast Regional Panel will meet from 1 p.m. to 5:30 p.m. on Wednesday, May 21, 2003, and 8:30 a.m. to 3:30 p.m., Thursday, May 22, 2003.

ADDRESSES: The Northeast Regional Panel meeting will be held at the Bluenose Inn, 90 Eden Street, Bar Harbor, ME 04609. Phone 207–288–3348.

FOR FURTHER INFORMATION CONTACT: Susan Snow-Cotter, 617–626–1202 or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Northeast Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Northeast Regional Panel was established on July 25, 2001 to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Northeast region of the United States. Geographically, the Northeast region is defined to include the jurisdictions of the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York. The Northeast Regional Panel will discuss several topics at this meeting including: updates of state and provincial ANS Management Plans; review of the rapid response workshop; updates and work plans of the Ballast Water Committee, Communication, Education, and Outreach Committee, the Policy and Legislation Committee; and the Science and Technology Committee: discussion on establishing research priorities for invasive species in the Northeast; discussion on a marine database; updates from the Aquatic Nuisance Species Task Force and National Invasive Species Council on national issues; an update on reauthorization of the National Aquatic Invasive Species Act; an update on pet industry outreach efforts; and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: April 4, 2003.

Jack Arnold,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 03–9609 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Aquatic Nuisance Species Task Force will meet from 8 a.m. to 5:30 p.m., Tuesday, May 13, 2003; and from 8 a.m. to 2:30 p.m., Wednesday, May 14, 2003.

ADDRESSES: The ANS Task Force meeting will be held at the Radisson Hotel New Orleans, 1500 Canal Street, New Orleans, LA. Phone 504–522–4500.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: *sharon_gross@fws.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the ANS Task Force meeting include: a field trip to view local invasive species problems; an update of activities from each of the Task Force's regional panels; status and updates from several other Task Force committees including the Outreach and Education Committee and the Prevention Committee; status of State and Interstate ANS Management Plans; an update on ballast water management activities; an update on the activities of the National Invasive Species Council; a discussion of rapid response planning efforts; a discussion on the National Aquatic Invasive Species Act; approval of the Chinese Mitten Crab Management Plan; and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: April 4, 2003.

Jack Arnold,

Acting Co-chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 03–9610 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1990–EX]

Notice of Availability of Record of Decision for the Betze Project Dewatering, Eureka and Elko Counties, NV

AGENCY: Bureau of Land Management.

ACTION: Notice of availability (NOA) of record of decision.

SUMMARY: Pursuant to section 202 of the National Environmental Policy Act of 1969, a Supplemental Environmental Impact Statement (SEIS) has been prepared, under third party contract, by the Bureau of Land Management (BLM) Elko Field Office. The SEIS was prepared to analyze the impacts of Barrick Goldstrike Inc.'s dewatering program for the Betze Project and determine suitable mitigation measures. The Final SEIS was released to the public on January 31, 2003. The Record of Decision was signed by the Elko Field Manager on March 4, 2003, approving the SEIS and the proposed mitigation measures.

Copies of the ROD can be obtained from the Elko Field Office at 3900 Idaho Street, Elko, Nevada, or by calling (775) 753–0200 and requesting a copy of the document. It may also be downloaded from the Elko Field office Internet site at *www.nv.blm.gov/elko.* Additionally, a copy of the ROD will be mailed to individuals, agencies, or companies that commented during the scoping process, or on the Draft and Final SEIS.

EFFECTIVE DATES: Parties adversely affected by the Record of Decision have 30 days, from the date of publication of this notice, to file a Notice of Appeal in the office which issues this decision (43 CFR 4.411 and 4.413). The decision to approve the mining operation is in full force and effect, effective on the date of signing of the Record of Decision. A petition for a stay of the decision must be filed in accordance with the above cited regulations.

ADDRESSES: A copy of the Record of Decision can be obtained from: Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, Nevada 89801. A Notice of Appeal should be addressed to Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, NV 89801, and a copy to: Office of the Regional Solicitor, Salt Lake City Federal Building, 125 South State Street, Salt Lake City, UT 84138.

FOR FURTHER INFORMATION CONTACT: Kirk Laird, SEIS Coordinator, at Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, NV 89801 or telephone (775) 753–0200.

David Stout,

Associate Field Manager.

[FR Doc. 03–8797 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–03–1610–DU]

Notice of Intent To Designate Routes of Travel and Prepare an Associated Plan Amendment and Environmental Assessment in a Portion of the Northern and Eastern Mojave Desert (NEMO) Planning Area of the California Desert Conservation Area Plan (CDCA) Managed by the Bureau of Land Management

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent (NOI) to designate Routes of Travel and prepare associated Plan Amendment and Environmental Assessment (EA).

SUMMARY: This document provides notice that the BLM intends to amend the routes of travel designations in the NEMO area of the CDCA Plan area. The planning area is located in Inyo, San Bernardino, and a small portion of Mono Counties, California. This planning activity encompasses approximately 2.75 million acres of public land. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), BLM planning regulations, and other BLM management policies. The BLM California State Director recently approved the Record of Decision for Northern and Eastern Mojave Desert (NEMO) Management Plan. NEMO designated Routes of Travel within the Shadow, Ivanpah, and Piute-Fenner Valley Desert Tortoise Conservation Areas and conformed Congressional wilderness areas to the CDCA Plan. Route designations will be amended on the remaining BLM lands within the planning area (approximately 2.75 million acres) in the California Desert Conservation Area with the appropriate

NEPA analysis and documentation, consistent with the CDCA Plan and BLM planning regulations (43 CFR 1600 *et seq.*). Route designations include ''open'', ''closed'' and ''limited'' and will be in accordance with BLM route designation criteria outlined in 43 CFR 8342.1. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria can be submitted in writing to the address listed below and will be accepted throughout the creation of the Draft Routes of Travel designations. All public meetings will be announced through the local news media, newsletters, and the BLM Web site *http://www.ca.blm.gov/cdd/* at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

Public Participation: Public meetings will be held throughout the plan scoping and preparation period. Early participation is encouraged and will help determine the future management of the California Desert District public lands. Dates of scoping meetings are as follows: Monday, May 5, 2003, 4 p.m.–7 p.m., Yucca Valley, CA; Wednesday, May 7, 2003, 4 p.m.–7 p.m., Las Vegas, NV; Monday, May 12, 2003, 4 p.m.–7 p.m., Tecopa, CA; Tuesday, May 13, 2003, 4 p.m.–7 p.m., Ridgecrest, CA; Thursday, May 15, 2003, 4 p.m.–7 p.m., Independence, CA.

FOR FURTHER INFORMATION CONTACT: Roxie Trost, BLM, 2601 Barstow Road, Barstow, CA 92311; (760) 252–6020.

SUPPLEMENTARY INFORMATION: The NEMO planning process began in 1994. The NEMO Plan was approved on December 20, 2002 with the Record of Decision. The document is also available for review on line at *http://www.ca.blm.gov/cdd/landuseplanning.html.* Within the NEMO planning area, routes of travel were designated for Desert Tortoise Wildlife Management Areas in Shadow, Ivanpah and Piute-Fenner Valleys and surrounding bioregions (about 0.45 million acres). The current plan amendment addresses the remaining area in NEMO. Congressional wilderness areas within the planning area total approximately 1.2 million acres. The remainder of the planning area includes Wilderness Study Areas, the Dumont Dunes Off-Highway Vehicle Open Area and route networks through various multiple-use classes and Areas of Critical Environmental Concern.

Linda Hansen,

District Manager.

[FR Doc. 03–9710 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–AE]

Notice of Public Meeting: Northeast California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U. S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Thursday and Friday, June 5 and 6, 2003, in the Conference Room of the Bureau of Land Management's Alturas Field Office, 708 West 12th St., Alturas, California. On June 5, the meeting begins at 10 a.m. for a field tour on public lands managed by the BLM Alturas Field Office. On June 6, the meeting begins at 8 a.m. Time for public comments has been set aside for 1 p.m. on June 6.

FOR FURTHER INFORMATION CONTACT: Tim Burke, Field Manager, BLM Alturas Field Office, 708 West 12th St., Alturas, CA, (530) 233–4666; or BLM Public Affairs Officer Joseph J. Fontana, telephone (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northeast California and Northwest Nevada. At this meeting, agenda topics will include an update on the BLM process to develop new land use plans for the Eagle Lake, Alturas and Surprise field office jurisdictions, and RAC involvement in the process. The council will also hear an update on development of a management strategy for western juniper, and status reports from the managers of the Eagle Lake, Alturas and Surprise field offices. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: April 10, 2003.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 03–9549 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council (RAC).

The business meeting will be held on May 7–8, 2003, at the BLM Arizona Strip Field Office, 345 East Riverside Drive, St. George, Utah. It will begin at 2 p.m. and conclude at 6 p.m. on May 7, and will continue from 8 to 11 a.m. on May 8. (All times are based on Mountain Standard Daylight Savings.) The agenda items to be covered include: Review and approval of the January 27, and March 25, 2003 meeting minutes; BLM State Director's Update on Statewide Issues; Arizona Land Use Planning, ''Working Landscapes'' Initiative, Wild Horse and Burro Advisory Board and National RAC Meeting Updates; Presentation on Wilderness Areas Proposed in Arizona Land Use Planning Efforts; RAC Questions on Written Reports from BLM Field Office Managers; Update Proposed Field Office Rangeland Resource Teams, Reports by the Standards and Guidelines, Recreation, Public Relations, Land Use Planning, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 5 p.m. on May 7, for any interested persons who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222

North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Lonna O'Neil,

Acting Arizona State Director.

[FR Doc. 03–9574 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–054–1020–PG: GP03–0147]

Notice of Public Meeting, John Day/Snake Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day Snake Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held May 16, 2003 at the Geiser Grand Hotel in Baker City, OR beginning at 8 a.m. The public comment period will begin at approximately 1 p.m. and the meeting will adjourn at approximately 3 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in North East Oregon.

Meeting Topics

National Meeting with RAC Chairs Subcommittee Updates

Meeting Procedures

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Virginia Gibbons at (541) 416–6700, Prineville Bureau of Land Management, 3050 NE Third Street, Prineville, OR, 97754.

Dated: April 14, 2003.

Danny L. Tippy,

Assistant Field Manager, Central Oregon Resource Area.

[FR Doc. 03–9608 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Closure Order Establishing Prohibitions at Folsom Lake, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of closure.

SUMMARY: The Bureau of Reclamation (Reclamation) is prohibiting lakeside access to the concrete gravity section of Folsom Dam.

DATES: The closure will be effective March 31, 2003, and will remain in effect indefinitely.

ADDRESSES: A map is available for inspection at the Bureau of Reclamation's Central California Area Office, located at 7794 Folsom Dam Road, Folsom, California 95630. The map may be viewed between the hours of 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bureau of Reclamation, Mid-Pacific Region Public Affairs Office at (916) 978–5100 or the Bureau of Reclamation, Central California Area Office at (916) 988–1707.

SUPPLEMENTARY INFORMATION: This action is being taken under 43 CFR part 423.3 to improve facility security and public safety. Reclamation will be prohibiting lake side access to the concrete structure in an effort to prevent activities that may inadvertently or deliberately cause damage to the structure. The following acts are prohibited within the Folsom Lake closure area:

(a) Operating motorized and/or non-motorized watercraft inside the buoys, which are positioned on the lake and in front of the dam. Exceptions: Operation and Maintenance personnel that have expressed authorization from Reclamation; law enforcement and fire department officers and Reclamation employees acting within the scope of their employment, and any others who have received expressed written authorization from Reclamation to enter the closure areas.

(b) Surface swimming or subsurface diving using any diving mode (Snorkeling, Self Contained Underwater Breathing Apparatus (SCUBA), Surface Supplied Air, Re-breather, *etc.*). Exceptions: Operation and Maintenance personnel that have expressed authorization from Reclamation; law enforcement and fire department officers and Reclamation employees acting within the scope of their employment, and any others who have received expressed written authorization from Reclamation to enter the closure areas.

(c) Vandalism or destroying, injuring, defacing, or damaging property or real property that is not under one's lawful control or possession.

This order is posted in accordance with 43 CFR 423.3(b). Violation of this prohibition or any prohibition listed in 43 CFR part 423 is punishable by fine, or imprisonment for not more than 6 months, or both.

Dated: March 20, 2003.

Thomas J. Aiken,

Area Manager, Central California Area Office, Mid-Pacific Region.

[FR Doc. 03–9575 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 2003 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, U.S. Department of Justice.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) announces the availability of Universal Hiring Programs (UHP) grants to pay up to 75 percent of the entry-level salary and benefits for newly hired, additional sworn officers over a three year grant term for a total of 36 months, up to a maximum of $75,000 per officer, to initiate or enhance community oriented policing. A minimum 25 percent local match, paid with state or local funds, is required. To qualify for funding, officers must be hired on or after the grant award start date. Funding will begin once the new officers have been hired on or after the date of the award, and will be paid over the course of the grant. At the time of application, applicants must agree to plan for the retention of each COPS-funded UHP position awarded with state, local or other non-COPS funds at the conclusion of federal funding for each position, for a minimum of one full local budget cycle. All policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program. Priority consideration

will be given to those applications that demonstrate a use of funds related to terrorism preparedness or response through community policing.

DATES: The application deadline for UHP funding is June 6, 2003. All UHP applications must be postmarked by the deadline date. Applications postmarked after the deadline date will not be considered. All grant awards are subject to the availability of funds. In the event that UHP funding requests exceed available grant funds, applications may be considered in subsequent fiscal years, subject to the availability of funds.

ADDRESSES: To obtain a copy of an application or for additional information, call the U.S. Department of Justice Response Center at 1–800–421–6770. The UHP application kit and information on the COPS Office are also available on the Internet via COPS Online at: *http://www.cops.usdoj.gov.*

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers to increase or enhance community policing on the streets and rural routes of this nation. The Universal Hiring Program (UHP) enables interested agencies to supplement their current sworn forces, or interested jurisdictions to establish a new agency, through federal grants for up to three years.

The *National Strategy for Homeland Security,* the Administration's roadmap for securing the homeland, highlights the key role that state and local governments play in responding to a terrorist attack. Terrorism preparedness and prevention have become key responsibilities for state and local units. As such, while all policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program, priority consideration will be given to those applications that demonstrate a use of funds related to terrorism preparedness or response through community policing.

Grants will be made for up to 75 percent of the entry level salary and benefits for each new officer over a three year grant term for a total of 36 months, up to a maximum of $75,000 per officer, with a required minimum of 25 percent local match to be paid with state or local funds. Funding will begin once the new officers have been hired on or after the date of the award, and will be paid over the course of the grant. Officers must be hired on or after the grant award start date to qualify for grant funding.

Waivers of the non-federal matching requirement may be requested under UHP, but will be granted only upon a demonstration of extraordinary fiscal hardship.

COPS grant funds must not be used to replace funds that agencies otherwise would have used to fund an officer in the absence of the grant. In other words, any hiring under UHP must in addition to, and not in lieu of, officers that otherwise would have been hired with state, local or other non-COPS funds. At the time of application, applicants must also agree to plan for the retention of each additional COPS-funded UHP position with state, local or other non-COPS funds at the conclusion of federal funding, for a minimum of one full local budget cycle. The retention requirement cannot be satisfied through attrition.

An award under the COPS Universal Hiring Program will not affect the consideration of an agency's eligibility for a grant under other COPS programs.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: April 8, 2003.

Carl R. Peed,

Director, Office of Community Oriented Policing Services.

[FR Doc. 03–9550 Filed 4–17–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

FY 2003 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of funding availability.

SUMMARY: The Department of Justice Office of Community Oriented Policing Services (COPS) announces the availability of funds under the Tribal Resources Grant Program, a program designed to meet the most serious needs of law enforcement in Indian communities through a comprehensive grant program that will offer a variety of funding options including: New, additional police officer positions; basic and/or specialized training for new and existing officers; training in community policing, grants management and computer training; uniforms and basic issue equipment; department-wide technology; and police vehicles. This program, which complements the COPS Office's efforts to fund additional community policing officers and to support innovative community policing, will enhance law enforcement infrastructures and community policing efforts in tribal communities which have limited resources and are affected by high rates of crime and violence. Applications should reflect the department's most serious law enforcement needs and must link these needs to the implementation or enhancement of community policing. In addition, a Retention Plan Certification form outlining how COPS-funded officer positions will be retained after federal funding has ended must be submitted with the grant application.

All Federally Recognized Tribes with established police departments or existing police efforts are eligible to apply. Federally Recognized Tribes that wish to establish police departments and meet specific criteria are eligible to apply. Federally Recognized Tribes may also apply as a consortium with a written partnership agreement that names a lead agency and describes how requested resources will serve the consortium's population. In addition, tribes that are currently served by Bureau of Indian Affairs (BIA) law enforcement may request funding under this grant program to supplement their existing police services. Tribes whose law enforcement services are exclusively provided by local policing agencies through a contract agreement are not eligible under the COPS TRGP program, but may be eligible to apply to the COPS Universal Hiring Program, and/or COPS in Schools program for police officer positions only.

DATES: Applications will be available in late April. Federally Recognized Tribes or villages that wish to apply may request an application from the COPS Office. The deadline for the submission of applications is May 30, 2003.

Applications must be post marked by May 30, 2003, to be considered eligible.

ADDRESSES: To obtain an application or for more information, call the U.S. Department of Justice Response Center at 1–800–421–6770. A copy of the application kit will also be available in April on the COPS Office Web site at: *http://www.cops.usdoj.gov.*

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, 1–800–421–6770 and ask to speak with your Tribal Grant Program Specialist.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement of 1994 (Pub. L. 103–322) authorizes the Department of Justice to

make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. The Tribal Resources Grant Program was developed to meet the most serious needs of law enforcement in tribal communities through a comprehensive grant program that will offer a variety of funding options.

This program will enhance law enforcement infrastructures and community policing efforts in these tribal communities, many of which have limited resources and are affected by high rates of crime and violence.

The Tribal Resources Grant Program is part of a larger federal initiative which over the last five years has resulted in the Departments of Interior and Justice working in collaboration to improve law enforcement in tribal communities. Funding has been appropriated to several DOJ agencies including the FBI, the Bureau of Justice Assistance (BJA), the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the COPS Office. COPS is coordinating with these agencies as well as with the Office of Law Enforcement Services of the Bureau of Indian Affairs to ensure that limited resources are not spent on duplicative efforts.

A total of $34.7 million in funding will be available under the Tribal Resources Grant Program. The grant will cover a maximum federal share of 75% of the total project costs. A latch match requirement of at least 25% of the total project costs is included in this program. A waiver of the local match requirement may be requested but will be granted only on the basis of documented demonstrated fiscal hardship. Requests for waivers must be submitted with the application.

Tribes whose law enforcement services are exclusively provided by local policing agencies through contract arrangements are not eligible under this COPS program. However, tribes that do not meet the eligibility requirements for this program may be eligible to apply to the COPS Office Universal Hiring Program and/or COPS in Schools program for police officer positions only.

Receiving an award under the Tribal Resources Grant Program will not preclude grantees from future consideration under other COPS grant programs for which they are eligible.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: April 9, 2003.

Carl R. Reed,

Director, Office of Community Oriented Policing Services.

[FR Doc. 03–9551 Filed 4–17–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review:

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Dirck Harris, Document Services Branch, Room 3110, 650 Massachusetts Avenue, NW., Washington, EC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* ATF Distribution Center Contractor Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF 1370.4. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* Business or other for-profit. *Other:* Individual or households. The information provided on the form is used to evaluate the ATF Distribution Center contractor and the services it provides the users of ATF forms and publication.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 21,000 respondents will complete a 1 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 168 annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 15, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–9597 Filed 4–17–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed collection; Comments Requested

ACTION: 60-day notice of information collection under review; extension of a currently approved collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms

and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Scot Thomasson, Chief, Firearms Enforcement Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF REC 5000/2. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 50 respondents will take 15 minutes per line entry and that 26 entries will be made per year.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 325 annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 15, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–9598 Filed 4–17–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review; extension of a currently approved collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Patterson, Public Safety Branch, 800 K Street, NW., Suite 710, Washington, DC 20001.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Renewal of Explosives License or Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5400.14/5400.15, Part III. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Federal government, State, local or tribal government. The information collection activity is used for the renewal of explosives licenses and permits. The short renewal form is used in lieu of a more detailed application.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,500 respondents will complete a 20 minute form.

(6) An estimate of the total public burden (in hours) associated with the collection: there is an estimated 1,050

annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 15, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–9599 Filed 4–17–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Annual Determination of Average Cost of Incarceration

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: The fee to cover the average cost of incarceration for Federal inmates in 2001 was $22,174, and in 2002 was $22,517.

EFFECTIVE DATE: April 18, 2003.

ADDRESSES: Office of General Counsel, Federal Bureau of Prisons, 320 First St., NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, (202) 307–2105.

SUPPLEMENTARY INFORMATION: 28 CFR part 505 allows for assessment and collection of a fee to cover the average cost of incarceration for Federal inmates. We calculate this fee by dividing the number representing Bureau facilities' monetary obligation (excluding activation costs) by the number of inmate-days incurred for the preceding fiscal year, and then by multiplying the quotient by 365.

Under § 505.2, the Director of the Bureau of Prisons determined that, based upon fiscal year 2001 and 2002 data, the fee to cover the average cost of incarceration for Federal inmates in 2001 was $22,174 and in 2002 was $22,517.

Harley G. Lappin,

Director, Bureau of Prisons.

[FR Doc. 03–9595 Filed 4–17–03; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) Grants for Small Faith-Based and Community-Based Non-Profit Organizations; Amendment

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice; amendment.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** of April 4, 2003, concerning the availability of grant funds for small faith-based and community-based non-profit organizations. The document is being amended.

EFFECTIVE DATE: April 18, 2003.

FOR FURTHER INFORMATION CONTACT: Linda Forman, Grants Management Specialist, Division of Federal Assistance, Fax (202) 219–8739.

Amendment to the Federal Register Notice dated: 68 FR No. 65/Friday, April 4, 2003: Legal Rules That Apply to Faith-based Organizations That Receive Government Funds

The government is prohibited from directly funding religious activity.* These grants may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious practices. Neutral, secular criteria that neither favor nor disfavor religion must be employed in the selection of grant and sub-grant recipients. In addition, under the WIA and DOL regulations implementing the Workforce Investment Act, a recipient may not train a participant in religious activities, or permit participants to construct, operate, or maintain any part of a facility that is primarily used or devoted to religious instruction or worship. Under WIA, ''no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.''

*The term ''direct'' funding is used to describe funds that are provided ''directly'' by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term ''direct'' funding may be used to refer to those funds that an organization receives directly from the Federal government (also known as ''discretionary'' funding), as opposed to funding that it receives from a State or local government (also known as ''indirect'' or ''block grant'' funding). In this SGA, the term ''direct'' has the former meaning.

Dated: April 15, 2003.

Signed at Washington, DC, this 15th day of April, 2003.

James W. Stockton,

Grant Officer.

[FR Doc. 03–9588 Filed 4–17–03; 8:45 am]

BILLING CODE 4510–30—M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wage for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment

procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their dates of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefits information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determination Issued Under the Davis-Bacon and related Acts'' are listed by Volume and States:

Volume IV

Wisconsin
WI020039 (Apr. 18, 2003)
WI020040 (Apr. 18, 2003)

Withdrawn General Wage Determination Decisions

This is to advise all interest parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determinations as listed below:

WI020049—See WI020039
WI020050—See WI020040

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA020001 (Mar. 01, 2002)
MA020002 (Mar. 01, 2002)
MA020003 (Mar. 01, 2002)
MA020004 (MAR. 01, 2002)
MA020005 (Mar. 01, 2002)
MA020006 (Mar. 01, 2002)
MA020007 (Mar. 01, 2002)
MA020009 (Mar. 01, 2002)
MA020010 (Mar. 01, 2002)
MA020012 (Mar. 01, 2002)
MA020013 (Mar. 01, 2002)
MA020014 (Mar. 01, 2002)
MA020015 (Mar. 01, 2002)
MA020017 (Mar. 01, 2002)
MA020018 (Mar. 01, 2002)
MA020019 (Mar. 01, 2002)
MA020020 (Mar. 01, 2002)
MA020021 (Mar. 01, 2002)

Maine
ME020001 (Mar. 01, 2002)
ME020002 (Mar. 01, 2002)
ME020005 (Mar. 01, 2002)
ME020006 (Mar. 01, 2002)
ME020007 (Mar. 01, 2002)
ME020008 (Mar. 01, 2002)
ME020009 (Mar. 01, 2002)
ME020010 (Mar. 01, 2002)

New Jersey
NJ020002 (Mar. 01, 2002)
NJ020003 (Mar. 01, 2002)

New York
NY020003 (Mar. 01, 2002)
NY020004 (Mar. 01, 2002)
NY020005 (Mar. 01, 2002)
NY020007 (Mar. 01, 2002)
NY020010 (Mar. 01, 2002)
NY020018 (Mar. 01, 2002)
NY020026 (Mar. 01, 2002)
NY020041 (Mar. 01, 2002)
NY020045 (Mar. 01, 2002)
NY020048 (Mar. 01, 2002)
NY020072 (Mar. 01, 2002)

Volume II

Delaware
DE020002 (Mar. 01, 2002)
DE020003 (Mar. 01, 2002)
DE020004 (Mar. 01, 2002)
DE020009 (Mar. 01, 2002)

Maryland
MD020056 (Mar. 01, 2002)

Pennsylvania
PA020001 (Mar. 01, 2002)
PA020002 (Mar. 01, 2002)
PA020004 (Mar. 01, 2002)
PA020005 (Mar. 01, 2002)
PA020011 (Mar. 01, 2002)
PA020013 (Mar. 01, 2002)
PA020016 (Mar. 01, 2002)
PA020018 (Mar. 01, 2002)
PA020024 (Mar. 01, 2002)
PA020027 (Mar. 01, 2002)
PA020038 (Mar. 01, 2002)
PA020041 (Mar. 01, 2002)
PA020042 (Mar. 01, 2002)

Virginia
VA020025 (Mar. 01, 2002)
VA020079 (Mar. 01, 2002)

West Virginia
WV020002 (Mar. 01, 2002)

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington DC this 10th day of April, 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–9309 Filed 4–17–03; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Notice of Availability of Calendar Year 2004 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Solicitation for proposals for the provision of civil legal services.

SUMMARY: The Legal Services Corporation (LSC) is the national

organization charged with administering federal funds provided for civil legal services to low-income people.

LSC hereby announces the availability of competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to eligible clients in the service area(s) of the states and territories identified below. The exact amount of congressionally appropriated funds and the date, terms and conditions of their availability for calendar year 2004 have not been determined.

DATES: *See* **SUPPLEMENTARY INFORMATION** section for grants competition dates.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750 First Street NE., 10th Floor, Washington, DC 20002–4250. Starting June 2, 2003, the address will be Legal Services Corporation—Competitive Grants, 3333 K Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Office of Program Performance by e-mail at *competition@lsc.gov*, or visit the grants competition Web site at *www.ain.lsc.gov*.

SUPPLEMENTARY INFORMATION: The Request for Proposals (RFP) will be available April 25, 2003. Applicants must file a Notice of Intent to Compete (NIC) to participate in the competitive grants process.

Applicants competing for service areas in Alabama, American Samoa, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Montana, North Carolina, Oklahoma, Pennsylvania, Tennessee, Texas, Wisconsin, and Wyoming must file the NIC by May 23, 2003, 5 p.m. ET. The due date for filing grant proposals for service areas in these states is June 23, 2003, 5 p.m. ET.

Applicants competing for service areas in Mississippi, Missouri, Nevada, and New York must file the NIC by July 11, 2003, 5 p.m. ET. The due date for filing grant proposals for service areas in these states is August 8, 2003, 5 p.m. ET.

LSC is seeking proposals from: (1) Non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients; (2) private attorneys; (3) groups of private attorneys or law firms; (4) State or local governments; and (5) substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The RFP, containing the NIC and grant application, guidelines, proposal content requirements, service area descriptions, and specific selection criteria, will be available from *http://www.ain.lsc.gov*, by April 25, 2003. LSC will not FAX the RFP to interested parties.

Below are the service areas for which LSC is requesting grant proposals. Service area descriptions will be available from Appendix A of the RFP. Interested parties are asked to visit *http://www.ain.lsc.gov* regularly for updates on the LSC competitive grants process.

State	Service area
Alabama	AL–1, AL–2, AL–3, MAL
American Samoa	AS–1
Arkansas	MAR
California	CA–2, CA–19, CA–26, CA–29, CA–30, CA–31, MCA
Colorado	CO–6, NCO–1, MCO
District of Columbia.	DC–1
Florida	FL–13, FL–14, FL–15, FL–16, FL–17, FL–18, FL–5, MFL
Georgia	GA–1, GA–2, MGA
Illinois	IL–6, MIL
Indiana	IN–5, MIN
Kentucky	MKY
Louisiana	LA–10, LA–11, MLA
Massachusetts	MA–1, MA–2, MA–3, MA–4, MA–5, MA–10
Mississippi	MS–9, MS–10, MMS, NMS–1
Missouri	MO–8, MMO
Montana	MT–1, MMT, NMT–1
Nevada	NV–1, MNV, NNV–1
New York	NY–7, NY–20, NY–21, NY–22, NY–23, NY–24, MNY
North Carolina	NC–5, MNC, NNC–1
Oklahoma	OK–3, MOK
Pennsylvania	PA–1, PA–5, PA–8, PA–11, PA–23, PA–24, PA–25, PA–26, MPA
Tennessee	MTN
Texas	MTX
Wisconsin	WI–2, NWI–1
Wyoming	WY–4, MWY, NWY–1

Dated: April 14, 2003.

Michael A. Genz,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. 03–9465 Filed 4–17–03; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

ERA Requirements Document; Request for Comment

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of document; request for comment.

SUMMARY: NARA is seeking public comment on the draft Electronic Records Archives (ERA) Requirements Document. ERA will be a comprehensive, systematic, and dynamic means for preserving virtually any kind of electronic record, free from dependence on any specific hardware or software. The ERA, when operational, will make it easy for NARA customers to find records they want and easy for NARA to deliver those records in formats suited to customers' needs. The Draft ERA Requirements Document specifies at a high level the capabilities that the ERA must possess. This document is available on the NARA Opportunities for Public Comment Web page at: *http://www.archives.gov/about_us/opportunities_for_comment/opportunities_for_comment.html.* For a paper copy of the document, contact the person listed in **FOR FURTHER INFORMATION CONTACT.**

DATES: Comments must be received by May 23, 2003.

ADDRESSES: Please send your comments by e-mail to *ERA.Program@nara.gov* or by mail to ERA Program (NHE), National Archives at College Park, Room 1540, 8601 Adelphi Rd., College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Electronic Records Archives Program at (301) 837–0740.

SUPPLEMENTARY INFORMATION: The ERA system will authentically preserve and provide access to any kind of electronic record. To do this, ideally the system would be able to take any type of record, from any entity in the Federal Government, created using any type of application, on any computing platform, and provide discovery and delivery to anyone with an interest and legal right of access, enabling NARA to carry out its mission into the future. Detailed background information on the ERA program is available at the ERA Web site, *http://www.archives.gov/electronic_records_archives/about_era.html.*

NARA seeks comments on whether the requirements for ERA are complete, comprehensive, consistent, and understandable. Where applicable, comments should be referenced to the numbering within the ERA Requirements Document.

Dated: April 15, 2003.

Nancy Y. Allard,

NARA Federal Register Liaison.

[FR Doc. 03–9587 Filed 4–17–03; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Workshop for Rulemaking and Scoping for Environmental Issues on Controlling the Disposition of Solid Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUPPLEMENTARY INFORMATION: As discussed in a **Federal Register** Notice (FRN) issued February 28, 2003, the Nuclear Regulatory Commission (NRC) is conducting an enhanced participatory rulemaking on alternatives for controlling the disposition of solid materials that originate in restricted or impacted areas of NRC-licensed facilities, and that have no, or very small amounts of, radioactivity resulting from licensed operations. As noted in that FRN, the NRC is seeking stakeholder participation and involvement in identifying alternatives and their environmental impacts that should be considered as part of the rulemaking. Considerable information collection effort has been conducted in this area and the Commission is building on existing information to focus on potential solutions. The NRC has not made a decision on the scope or details of a regulation and is continuing to develop a solid technical basis for the rulemaking.

To assist in obtaining stakeholder input to this process, the NRC is holding a workshop, on May 21–22, 2003, to solicit new input on the rulemaking alternatives with a focus on the feasibility of alternatives that would limit where the solid material can go. This workshop provides an opportunity to discuss the rulemaking effort as well as to re-open the National Environmental Policy Act (NEPA) scoping process that began in 1999 for the preparation of a generic environmental impact statement (EIS) in support of the control of the disposition of solid materials rulemaking effort. Issues raised in 1999, at public workshops and in public comments will be considered along with any new issues or alternatives identified at this workshop. The workshop will provide an opportunity for stakeholders to offer additional input on the alternatives, with particular focus on the alternatives of conditional use and EPA regulated landfill disposal. Earlier information collection efforts did not result in sufficient information to clearly indicate the viability or economic feasibility of these two alternatives. Thus, the Commission specifically directed the staff to explore and document the feasibility of these alternatives and, in particular, noted that the staff should have discussions with stakeholders with regard to whether the alternatives: (1) Are effective; (2) are reasonably possible to implement; and (3) would increase public confidence in the process.

To assure that a diversity of viewpoints on the alternatives will be presented, we are inviting stakeholders representing the metals and cement industries, citizens groups, Federal and State agencies, licensees, tribal governments, and landfill operators to sit in a roundtable discussion. Although the focus of the meeting will be on the roundtable discussion, there will be opportunities for members of the audience to offer comments and ask questions. To further assist stakeholders, the staff has placed on its Web site an information packet which includes questions for stakeholders on the alternatives and issues, describes how to provide comments to the NRC, and links to other documents. (Go to *http://www.nrc.gov/materials.html* and, under ''Key Topics,'' select ''Controlling the Disposition of Solid Materials.'') Also, the workshop agenda, which is provided in this FRN, has been included on the Web page.

Workshop Details: This workshop will be held on May 21–22, 2003 from 8:30 a.m.—5:30 p.m. in the NRC Auditorium, 11545 Rockville Pike, Rockville, Maryland 20852.

Agenda

Wednesday, May 21, 2003

8:30 a.m. Opening remarks, participant introductions
Francis ''Chip'' Cameron, Facilitator
9:15 a.m. Welcome, Workshop Objectives
Martin J. Virgilio, Director, Office of Nuclear Material Safety and Safeguards
9:30 a.m. Background and context
NRC activities and plans—where are we now and how did we get here?
Frank Cardile, Office of Nuclear Material Safety and Safeguards
The NEPA process and potential alternatives for the disposition of solid materials
Phyllis Sobel and Frank Cardile, Office of Nuclear Material Safety and Safeguards
Participant questions
10:10 a.m. Break
10:30 a.m. The international regulatory framework
Gordon Linsley, IAEA
Participant questions
11:00 a.m. Participant discussion on the alternatives being considered on the disposition of solid materials

Perspectives include: paramount issues of concern to participants, updates on participant views on alternatives, other alternatives that have not been identified, and stakeholder participation and involvement in identifying alternatives and their environmental impacts.

12:00 p.m. Audience comments and questions
12:30 p.m. Lunch
1:30 p.m. Continued discussion of participant perspectives on the alternatives
2:30 p.m. The conditional use alternative
Participant discussion

Discussion topics: What criteria should guide the acceptability of conditional use from a public health and safety perspective? What type of conditional use might be acceptable? What is the feasibility of the conditional use alternative, *i.e.*, are there any constraints or impediments to implementing this alternative? What types of regulatory controls may be necessary to ensure that any conditional use program will be effectively implemented? Is there any additional information that must be developed to fully evaluate this alternative?

3:30 p.m. Break
4:00 p.m. Continued discussion of the conditional use alternative
5:00 p.m. Audience comments and questions and review of the next day's agenda and adjourn

Thursday, May 22, 2003

8:30 a.m. Agenda check
8:45 a.m. Recap previous day's discussion
9:30 a.m. The disposal alternative
Participant discussion

Discussion topics: What criteria should guide the acceptability of disposal from a public health and safety perspective? What type of disposal might be acceptable, for example, RCRA Subtitle C or Subtitle D landfills, other types of disposal facilities? What is the feasibility of the disposal alternative, *i.e.*, are there any constraints or impediments to implementing this alternative? What types of regulatory controls may be necessary to ensure that any disposal program will be effectively implemented? Is there any additional information that must be developed to fully evaluate this alternative?

10:30 a.m. Break
11:00 a.m. Continued discussion of the disposal alternative
12:15 p.m. Audience comments and questions
12:30 p.m. Lunch
1:30 p.m. Major recommendations

2:30 p.m. Audience comments and questions
3:00 p.m. Break
3:30 p.m. Major recommendations (continued): Participant discussion
4:45 p.m. Audience questions
5:15 p.m. Wrap up

Notification of Attendance: It is strongly encouraged that prospective participants contact NRC prior to the meeting to expedite the required security processing for NRC visitors. Contact Kim Karcagi, telephone: (301) 415–6701; e-mail: *kxk2@nrc.gov*, or Jayne McCausland, telephone: (301) 415–6219; e-mail: *jmm2@nrc.gov*, or Rose Conn, telephone: (301) 415–7438; e-mail: *rmc@nrc.gov* and submit participant name, affiliated organization, phone number, address, and citizenship status. Also, it is suggested that invited speakers as well as attendees, limit the amount of personal items and electronic devices brought into the building. If hardware from a participant, like a laptop, must be brought in, it has been suggested by security that a typed letter indicating the laptop's make, model, and owner's contact information be given to security staff upon arrival.

Travel Information: NRC Headquarters, where the public workshop will be held, is very accessible by public transportation. It is recommended that participants commute to the workshop via the Metrorail system (Metro). The White Flint Metro stop, along the red line, is adjacent to the One White Flint Building, along Rockville Pike and Marinelli Road. There are limited spaces available in the public meter parking and Metro parking lot along Marinelli Road. Due to security processing upon entrance into the building, it is recommended that attendees allot additional time to arriving at the workshop.

FOR FURTHER INFORMATION CONTACT: Questions on the public meeting process should be directed to Chip Cameron; e-mail: *fxc@nrc.gov*, telephone: (301) 415–1642; Office of the General Counsel, USNRC, Washington, DC 20555–0001. Questions on the rulemaking process should be directed to Frank Cardile, telephone: (301) 415–6185; e-mail: *fpc@nrc.gov*, Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555–0001. Questions on the environmental scoping process should be directed to Phyllis Sobel; e-mail: *pas@nrc.gov*, telephone: (301) 415–6714; Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555–0001.

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

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–9603 Filed 4–17–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Report to Congress on Abnormal Occurrences, Fiscal Year 2002; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974 (Public Law 93–438) identifies an abnormal occurrence (AO) as an unscheduled incident or event that the U.S. Nuclear Regulatory Commission (NRC) determines is significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (Public Law 104–66) requires that AOs be reported to Congress annually. During fiscal year 2002, 10 events that occurred at facilities licensed or otherwise regulated by the NRC and/or Agreements States were determined to be AOs. The report describes three AOs at facilities licensed by the NRC. One event involved the degradation of the reactor head at a nuclear power plant, the second event involved a gamma stereotactic radiosurgery misadministration and the third event involved an overexposure of a radiopharmacist at a materials facility. The report also discusses seven events at facilities licensed by Agreement States. As required by section 208, the discussion for each event includes the date and place, the nature and probable consequences, the cause or causes, and the action taken to prevent recurrence. Each event is also being described in NUREG–0090, Vol. 25, ''Report to Congress on Abnormal Occurrences, Fiscal Year 2002.'' This report will be available electronically at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/*.

Nuclear Power Plants

02–1 Performance Deficiency Resulting in Reactor Vessel Head Degradation at Davis-Besse Nuclear Power Station in Oak Harbor, Ohio

Date and Place—March 6, 2002; Davis-Besse Nuclear Power Station, a pressurized-water reactor plant designed by Babcock and Wilcox Company, operated by First Energy Nuclear Operating Company and located near Oak Harbor, Ohio.

Nature and Probable Consequences—On February 16, 2002, the Davis-Besse facility began its 13th refueling outage, which included inspections of the control rod drive mechanism (CRDM) nozzles in accordance with NRC Bulletin 2001–01, ''Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles,'' issued on August 3, 2001. These nozzles penetrate through the reactor pressure vessel (RPV) head and are attached by welds. Nozzle cracking was first discovered in the industry in the late 1980s. The concern with cracking is the potential loss of control rod drive function (rod ejection) and the resultant loss of coolant accident (LOCA) should the cracks reach a critical size and orientation. Also of concern is the potential for the reactor coolant to leak through small cracks in CRDM nozzles and cause boric acid corrosion of the RPV head. The RPV head is an integral part of the reactor coolant pressure boundary (Figure 1) and loss of its integrity can likewise result in a LOCA.

On February 27, 2002, the licensee notified the NRC that non-destructive examination of CRDM Nozzles 1, 2 and 3 identified that those nozzles contained small through-wall cracks. The licensee decided to repair these three nozzles plus two other nozzles with identified cracks that did not appear to be through-wall. The repair process included machining away the lower portion of the CRDM nozzle to a point above the cracks in the nozzle material. During this activity, CRDM nozzle 3 loosened in the head and on March 6, 2002, the licensee began an investigation to identify the cause. At the same time, activities were underway to remove boric acid deposits from the top of the RPV head caused by leakage of reactor coolant from the cracks and past leaking CRDM flanges. After removing the boric acid deposits, the licensee identified a large corrosion cavity in the head material adjacent to CRDM Nozzle 3 (Figure 2). The cavity was approximately 6 inches in length and 4 to 5 inches in width. Within this area the 6.63 inch thick low alloy steel head was corroded away leaving only the stainless steel cladding layer on the inside. The remaining cladding layer ranged in thickness from 0.20 to 0.31 inches. Subsequent metallurgical examination of this section of cladding identified a shallow crack approximately ⅜ inch in length. This cladding layer is designed as a corrosion resistant layer and is not specifically designed to retain reactor operating pressure. In addition to the cavity adjacent to Nozzle 3, a comparatively

small cavity was identified adjacent to Nozzle 2. This cavity was approximately 1.75 inches wide, 4 inches long, and 0.25 inches deep. Region III sent an Augmented Inspection Team (AIT) to the site to determine the facts and circumstances of the head degradation, beginning on March 12, 2002, and held a public exit meeting on April 5, 2002. A follow-up inspection identified several apparent violations of Agency regulations. The apparent violations will be processed in accordance with Agency procedure.

On April 8, 2002, prior to discovery of the crack in the cladding, the licensee submitted a safety significance assessment for the degraded RPV head to the NRC. This assessment determined that the as-found stainless steel cladding layer would have remained intact during anticipated operational occurrences and postulated accidents. Further, this assessment determined that had the RPV head failed due to the corrosion: (a) Adequate core cooling could have been established and maintained for the long term, (b) the reactor could have been placed and maintained in a safe shutdown condition, and (c) the integrity of containment would not have been compromised. The NRC staff is performing an independent assessment and reviewing the adequacy of the licensee's assessment. The NRC has not reached a final conclusion on the significance of this condition.

Cause or Causes—On April 18, 2002, the licensee submitted its Root Cause Analysis Report to the NRC. In this report, the licensee concluded that the most probable technical cause of the RPV head degradation was boric acid corrosion resulting from leakage through a crack in the CRDM penetration nozzle attributable to primary water stress corrosion cracking. Further, this corrosion had occurred over a period of several years. Absent more definitive information, the licensee's technical root cause analysis represents a plausible scenario for the degradation.

The licensee has completed a number of activities designed to identify management and human performance issues which contributed to this event. Several management and human performance issues were subsequently identified by both the licensee and NRC. NRC continues to monitor these activities and independently assess the effectiveness of the licensee's efforts in this area.

Actions Taken To Prevent Recurrence

Licensee—The licensee elected to replace the damaged head with one procured from the owners of the canceled Midland nuclear power plant located in Michigan. The licensee has also completed a number of activities designed to identify the management and human performance deficiencies which contributed to the degradation of the reactor vessel head and implemented a series of inspections and evaluations to identify and correct any other potentially problematic plant issues.

NRC—Region III issued Confirmatory Action Letter (CAL) 3–02–001 on March 13, 2002, and Revised CAL 3–02–001A on May 15, 2002, which detailed specific licensee actions to be taken before NRC would consider restart of Davis-Besse. The NRC issued two Information Notices (IN) and two Bulletins to promptly inform the industry of the event: IN 2002–11, ''Recent Experience with Degradation of Reactor Pressure Vessel Head''; IN 2002–13, ''Possible Indicators of Ongoing Reactor Pressure Vessel Head Degradation''; Bulletin 2002–01, ''Reactor Pressure Vessel Head Degradation and Reactor Coolant Pressure Boundary Integrity''; and Bulletin 2002–02, ''Reactor Pressure Vessel Head and Vessel Head Penetration Nozzle Inspection Programs.''

The NRC placed Davis-Besse under the Inspection Manual Chapter 0350 ''Oversight of Operating Reactor Facilities in a Shutdown Condition With Performance Problems'' on April 29, 2002. Further inspections and assessment of Davis-Besse performance will be performed before plant restart is considered. The NRC also chartered a Lessons Learned Task Force (LLTF). The objective of this task force was to independently evaluate the NRC's regulatory processes related to assuring RPV head integrity in order to identify and recommend areas for improvement that may be applicable to either the NRC or the nuclear industry. The LLTF completed its evaluation and its conclusions were reviewed by a Senior Management Review Team to determine appropriate Agency actions. The recommendations of the Senior Management Review Team were issued November 26, 2002. A Commission meeting was held on January 14, 2003, to brief the Commission on the Senior Management Review Team recommendations and the Commission approved proceeding with the recommendations.

This event is considered open for the purpose of this report.

Fuel Cycle Facilities (Other Than Nuclear Power Plants)

None of the events that occurred at fuel cycle facilities during this period was significant enough to be reported as an AO.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, etc.)

The NRC determined that the following events which occurred at facilities, licensed or otherwise regulated by the NRC, during this reporting period were significant enough to be reported as AOs:

02–2 Gamma Stereotactic Radiosurgery (Gamma Knife) Misadministration at St. Luke's Medical Center in Milwaukee, Wisconsin

Date and Place—July 10, 2001; St. Luke's Medical Center; Milwaukee, Wisconsin.

Nature and Probable Consequences—A patient undergoing Gamma Stereotactic Radiosurgery (Gamma Knife) was prescribed treatment of 20 Gy (2,000 rad) to a portion of the brain. During the treatment, the licensee completed three of eight treatment fractions and approximately one-half of the fourth fraction when the medical physicist and radiation therapist realized that the administered treatment utilized the treatment parameters for another patient, resulting in a dose of 12.8 Gy (1,280 rad) to an unintended portion of the brain (*i.e.*, wrong treatment site).

For treatment, the licensee's medical physics staff prepared treatment plans for two patients, to be treated on the same day. The treatment plan for Patient A consisted of a prescribed dose of 18 Gy (1,800 rad). Prior to initiating treatment of Patient A, someone on the licensee's staff handed the plan of treatment for Patient B to the licensee's radiation therapist; later, the therapist could not recall who had handed her the plan. Using Patient B's treatment plan, the treatment team set up and delivered the first three fractions to Patient A and began delivery of the fourth fraction. The error was discovered by the medical physicist during delivery of the fourth fraction. Once notified of the error, the radiation oncologist terminated the treatment.

The medical physicist determined that the treatment delivered a dose of 12.8 Gy (1,280 rad) to an unintended region of the patient's brain. The radiation oncologist determined that the location of the unintended site was far enough away from the intended site to proceed with the intended treatment.

The licensee subsequently administered the intended treatment without incident. The radiation oncologist did not anticipate any immediate adverse effects to the patient because of the treatment to the wrong site. He was not certain of the potential for any long-term effects as a result of the misadministration.

The NRC contracted with a medical consultant to evaluate the medical data associated with the July 10, 2001, misadministration and assess any probable deterministic effects to the exposed patient. The consultant agreed with the licensee's assessment. With regard to long-term affects, the NRC's consultant concluded that the misadministration may be at the threshold of late central nervous system injury and may produce symptoms. The consultant further opined that long-term follow up was indicated for the patient and that the patient was eligible for inclusion in the Department of Energy's Office of Epidemiology and Health Surveillance voluntary life-time morbidity study. The licensee conducted medical follow up of the patient to identify and respond to potential adverse medical consequences resulting from the misadministration in December of 2001. However, during an attempt to follow up on the patient in June 2002, the licensee lost contact with the patient.

The licensee notified the patient's referring physician, who was also the attending neurosurgeon, immediately after the event. The radiation oncologist informed the patient of the event the following day and subsequently provided a copy of the report submitted to the NRC.

Cause or Causes—This misadministration was caused by human error, in that the licensee staff failed to verify that the treatment plan used was for the patient being treated. Contributing factors included: (1) The patient's name was not on each page of the computer-generated treatment plan; (2) the clipboard obscured the patient's name on the first page of the treatment plan; and (3) the licensee treated two patients with similar treatment plans.

Actions Taken To Prevent Recurrence

Licensee—Based on the cause and contributing factors of the misadministration, the licensee immediately implemented measures to ensure that patient-specific parameters are confirmed and verified prior to initiation of treatment. The measures included: (1) Independent verification of the treatment plan to ensure that it corresponds to the couch on the Gamma Knife unit; (2) labeling each page of the computer treatment plan with the patient's name; (3) placing the treatment plan in the standard pink-colored patient-specific binder; (4) ensuring that the outside of patient-specific binders have large lettering indicating the patient's name; (5) ensuring that all patient-specific binders contain all medical information for the patient; (6) use of clipboards to hold verification forms that do not cover up the patient's name at the top of the forms; and (7) training of applicable staff regarding the cause and contributing factors of the misadministration and the measures to ensure that patient-specific parameters are confirmed and verified prior to initiation of treatment.

NRC—The licensee was cited for violations that included failure to verify that the treatment parameters implemented were for the patient being treated.

This event is closed for the purpose of this report.

02–3 Extremity Exposure in Excess of Regulatory Limits at Pacific Radiopharmacy, Limited, in Honolulu, Hawaii

Date and Place—March 26, 2002; Pacific Radiopharmacy, Limited, Honolulu, Hawaii.

Nature and Probable Consequences—During a routine, unannounced inspection conducted by the NRC on March 6, 2002, an inspector observed a radiopharmacist drawing 3700 megabecquerels (MBq) (100 millicurie (mCi)) bulk doses of technetium-99m (Tc–99m) utilizing a vial shield without a shielded top. The inspector observed that the radiopharmacist used his left index finger to hold the vial containing the Tc-99m in the shield when he inverted the vial to draw a dose. After questioning the individual, the inspector determined that this was the individual's routine practice. The inspector then informed the licensee that this practice may contribute to unnecessary exposure to the individual's finger and that the licensee should perform an evaluation to determine if the individual's extremity monitor (finger badge) was indicative of the actual dose received as a result of this handling practice. Following the inspection, a licensee consultant calculated the exposure to the individual's left index finger to be 7000 mSv (700 rem) for calendar year 2001. The exposure was reported to the NRC Operations Center on March 26, 2002. In addition, the licensee's consultant calculated the exposure to the individual's left index finger to be 1400 mSv (140 rem) from January 1, 2002, through March 13, 2002. The exposure was reported to the NRC Operations center as a 30 day report on March 28, 2002. The radiopharmacist's extremity exposure was chronic and not acute, occurring over the entire calendar year. The inspector viewed the individual's left index finger and did not identify any visible skin reddening.

Cause or Causes—Licensee management and the Radiation Safety Officer failed to effectively train Pacific Radiopharmacy employees on NRC requirements for the safe handling of radionuclides and failed to provide effective oversight of its radiation safety program.

Actions Taken To Prevent Recurrence

Licensee—The licensee has obtained additional vial shields with shielded tops, placed them at the second drawing station, and has required the radiopharmacist to use them. The licensee also reviewed the adequacy of the radiation safety officer's oversight of the radiation safety program, determined it to be inadequate, and has replaced the radiation safety officer with another individual. The new radiation safety officer conducts unannounced inspections of the radiopharmacy to ensure compliance with their procedures requiring the use of vial shields with shielded tops during dose drawing procedures.

On March 29, 2002, the NRC issued Confirmatory Action Letter (CAL) 4–02–003 to the licensee associated with the extremity exposure in excess of regulatory limits. On April 8, 2002, the licensee responded to the CAL with corrective actions which included: (1) Removing the radiopharmacist from working with radioactive materials throughout the remainder of calendar year 2002; (2) contracting with a local consultant to provide safety training, conduct random unannounced audits, and provide Radiation Safety Officer (RSO) services; and (3) replacing its current RSO with the new consultant and requiring the RSO to attend quarterly board meetings to provide safety reports to the board.

NRC—In addition to issuance of CAL 4–02–003, NRC staff also met with licensee representatives in a Predecisional Enforcement Conference on October 10, 2002, to discuss the inspection findings. Enforcement action is currently pending.

This event is closed for the purpose of this report.

Agreement State Licensees

The NRC determined that the following events, which occurred at Agreement State licensed facilities

during this reporting period, were significant enough for reporting as AOs:

AS 02–1 Loss of Package Integrity and Elevated Radiation Levels Measured at Federal Express Facility in Kenner, Louisiana

Date and Place—January 2, 2002, Federal Express facility at New Orleans International Airport, in Kenner, Louisiana.

Nature and Probable Consequences—A package containing iridium-192 (Ir–192) with elevated surface radiation levels was discovered at the Federal Express facility located at the New Orleans airport. The package was identified as a routine shipment for Source Production and Equipment Company (SPEC), located in St. Rose, Louisiana. After being notified by Federal Express authorities, a representative of SPEC picked up the package from the Federal Express facility. While loading the package, known as the SAFKEG, onto his truck, the individual noticed that his survey meter was offscale and his pocket dosimeter showed a reading of 1.6 mSv (160 mrem). The SAFKEG was transported back to SPEC facilities and entombed in high-density concrete bricks in its secured warehouse. The individual's total exposure during these activities was later determined to be 3.45 mSv (345 mrem).

The SAFKEG was shipped from a Swedish Company, Studsvik AB, and contained three vials loaded with a total of 1078 Ir–192 discs. The total activity was 366 terabecquerels (TBq) (9893 curies (Ci)). Shipping papers accompanying the package indicated that the Ir–192 was solid metal, in a Type B(U) package with a yellow radioactive III label, and a transportation index of 2 (radiation levels of 0.02 mSv/hr (2 mrem/hr) at one meter from the surface). Photographs taken by SPEC personnel, in St Rose, Louisiana, prior to the SAFKEG entombment confirmed that the appropriate U. S. Department of Transportation (DOT) labeling was affixed to the package. Surveys conducted at about the same time at 15 feet from the cask revealed measured radiation levels of 10 mSv/hr (1 rem/hr). The package remained entombed until a hot cell capable of remote inspection was constructed. After the SAFKEG's contents were removed, in the hot cell, and before it's shipment from the St. Rose facility, surveys for radiation levels and leak tests conducted for removable contamination showed no removable contamination.

The SAFKEG was originally shipped by Federal Express. A Health Physicist/Consultant to Federal Express performed dose estimate calculations for personnel exposed to the package during its transit. Personnel monitoring devices were worn by the flight crews for both the flights; specifically, from Sweden to Paris and from Paris to Memphis. The First Officer for the Paris to Memphis flight received 0.05 mSv (5 mrem) for the January–February 2002 monitoring period and 0.39 mSv (39 mrem) for the November–December 2001 period. The consultant concluded that there were no excessive radiation levels from the SAFKEG on either flight. The consultant's calculations estimated the highest dose to any Federal Express employee at 20 mSv (2 rem). The French and Swedish regulatory agencies evaluated the portions of the event that occurred within their jurisdictions.

Cause or Causes—On February 7, 2002, after construction of the hot cell, appropriate SPEC personnel opened the SAFKEG utilizing robotics. The tamper seal was intact; after it was broken, it was sealed in plastic and put aside. The interior shielded pot was removed and placed into a small lead shield. The shielding pot lid is normally secured with six allen head screws; however, one of the six screws was found loose. The plug assembly accessing the cavity containing the three vials of Ir–192 disks was removed, revealing that two of the three vials were open. The screw tops for the vials and a large number of Ir–192 disks were visible along the lip of the inner cavity. It is presumed the screw tops became unscrewed during transportation, resulting in the elevated external radiation levels.

Actions Taken To Prevent Recurrence

Licensee—The licensees involved in this occurrence are the package shipper, Studsvik AB, the package manufacturer, Croft, and the U.S. recipient, SPEC. The shipper and package manufacturer are pursuing corrective actions, but these have not been formalized as of the date of this report.

The inner-shielded pot of the package remained in the hot cell of the SPEC facility at the time of this report. SPEC had no plans to attempt further decontamination of the pot.

DOT—DOT issued a revision to the certificate of compliance (COC) requiring the type of radioactive material transported in the SAFKEG be contained in special form source capsules. This revision prohibits the use of the screw-top type vials that were used during this incident. The revised COC should prevent this type of occurrence in the future. DOT has discussed possible enforcement action as a result of this event.

State Agency—The State of Louisiana had the lead role in the investigation of this event and has concluded its investigation.

This event is closed for the purpose of this report.

AS 02–2 Industrial Radiography Occupational Overexposure at Longview Inspection in Channahon, Illinois

Date and Place—The Illinois Department of Nuclear Safety (the Department) was notified on January 15, 2002, by the licensee's RSO, that in June 2000, a radiographer experienced an overexposure and subsequent injury at a temporary job site near Channahon, Illinois.

Nature and Probable Consequences—On January 15, 2002, the licensee reported a potential overexposure to a radiographer and a subsequent injury that could have resulted from the overexposure. The overexposure occurred in June 2000, and involved a 3.0 TBq (81.2 Ci), Ir-192 source at a temporary job site near Channahon, Illinois. The radiographer, believing that the source was secured following the radiographic exposure, approached the guide tube area and knelt down without looking at his survey meter. The radiographer's alarming rate meter was inoperable because of a low battery. After changing the radiography film for the next shot and unhooking the guide tube, he noticed the source drive cable was still in the guide tube and his survey meter showed an off-scale reading. He immediately cranked the source back into the shielded position. His self-reading pocket dosimeter was off-scale. The radiographer did not inform the licensee of the incident. Approximately 2 weeks after the incident, the radiographer noticed skin redness in a 2-centimeter sized area of his left calf. Over the next year, the wound became ulcerated and would not heal. A physician examined the individual and concluded that it could have resulted from radiation. In January 2002, the licensee's RSO became aware of the condition and reported it to the Department. Prior to commencing an extensive investigation, the Department recommended that the licensee seek immediate assistance from Oak Ridge Radiation Emergency Assistance Center/Training Site (REAC/TS). The REAC/TS concluded that the injury could have resulted from the overexposure in June 2000. The Department performed interviews and extensive time-motion studies and concluded that the incident could have occurred as described by the radiographer. The estimated dose to the individual was 15,000 mSv (1,500 rem) to the extremity. The licensee's

radiation monitoring program revealed a whole body dose of 9.1 mSv (0.910 rem) assigned to the radiographer for the month of June 2000. The reading was within the normal range for this individual, based on licensee records.

The radiographer underwent skin grafting on February 26, 2002. Based on the results of the medical treatment, no long-term adverse health effects are expected.

Cause or Causes—The cause was identified as a failure to conduct a lockout survey of the camera after the source was retracted, the failure to conduct radiation surveys and the failure to utilize an operable alarming rate meter due to a low battery.

Actions Taken To Prevent Recurrence

Licensee—The licensee terminated the radiographer's employment and incorporated the event into the annual refresher training at all 31 Longview Inspection offices.

State Agency—The Department conducted an investigation and concluded that the subsequent injury could have resulted from the overexposure. The Department imposed a suspension of the radiographer's certification for one year.

This event is closed for the purpose of this report.

AS 02–3 Industrial Radiography Occupational Overexposure at McShane Industries in Baltimore, Maryland

Date and Place—September 25, 2001, McShane Industries, Baltimore, Maryland. The NRC was informed of this event in September 2001; however, this event was not documented as an AO in the ''Report to Congress on Abnormal Occurrences, Fiscal Year 2001'' because of its investigation at that time.

Nature and Probable Consequences—On September 25, 2001, a radiographer employed by Accurate Technologies Incorporated (ATI) of Tinton Falls, New Jersey, was overexposed while conducting industrial radiography in Baltimore, Maryland. (On December 20, 2001, the licensee changed its name to United Evaluation Services Incorporated.) The radiographer was using an Amersham 660A radiography exposure device (camera) when the sealed source containing 2.16 TBq (58.4 Ci) of Ir-192 failed to retract into the shielded position inside the camera following the previous radiographic exposure. The radiographer thought that the source was completely retracted into the shielded position when he relocated the camera, crank, guide tube and its extension tube in preparation for next exposure. The radiographer did not use a survey meter and was not wearing a pocket dosimeter, a whole body badge, or an alarming rate meter. The radiographer changed the film and identification, then secured the tip of the guide tube on to a different pipe weld for the next exposure. While attempting to unlock the camera for the next exposure, the radiographer noticed that the self-locking device on the camera was not in the locked position. Using the crank, the radiographer retracted the source into the shielded and secured position inside the camera. On September 29, 2001, the radiographer experienced burning and itching sensations in his fingers. On October 1, 2001, the radiographer notified the RSO and visited a physician. The physician reported that, on October 1, 2001, the radiographer had erythema on his fingers and palms. On October 5, 2001, State Inspectors observed radiation burns and blisters on the radiographer's hands. At the request of the State of Maryland, the United States Department of Defense, Armed Forces Radiobiology Research Institute, analyzed a 30 milliliter blood sample obtained from the radiographer, using cytogenetic biological dosimetry techniques, and reported a mean whole body dose estimation of approximately 2,670 mGy (267 rad). The assistant radiographer on site during this incident was not exposed.

Cause or Causes—The root cause of this radiation injury was identified as a failure by the radiographer to follow licensed radiation safety procedures, to comply with Maryland Regulations regarding radiation safety requirements for industrial radiographic operations, and to properly use required radiation detection and measurement devices. Specifically, the radiographer failed to wear an audible alarming rate meter or any type of dosimetry. He also failed to use a radiation survey meter. He inadvertently entered a very high radiation area caused by the Ir-192 sealed source that did not retract into the shielded position inside the camera. Finally, he failed to ensure that the source was secured in the shielded position prior to relocating the equipment from one location to another.

Actions Taken To Prevent Recurrence

Licensee—On October 4, 2001, the licensee agreed to discontinue all licensed activities until the completion of the Departmental Investigation.

State Agency—The licensee was cited for violations of Maryland Regulations for Control of Radiation. Specifically, the licensee was cited for exceeding occupational exposure limits; failure to conduct radiation surveys; failure to secure the device after the exposure; failure to wear and properly use a pocket dosimeter, alarming rate meter and film badge; failure to notify the Agency of an overexposure; failure to maintain a utilization log; failure to report a bankruptcy to the Agency; failure to notify the Agency before vacating premises; failure to authorize the RSO on the license; and several other associated violations. On October 25, 2001, the Agency issued a Cease and Desist Order to the licensee, prohibiting all industrial radiography activities in Maryland. ATI's Maryland radioactive materials license expired on December 31, 2001, and was terminated. The incident has been referred for escalated enforcement.

This event is closed for the purpose of this report.

AS 02–4 Intra Vascular Brachytherapy Misadministration (IVB) at Rhode Island Hospital, Providence, Rhode Island

Date and Place—January 28, 2002; Rhode Island Hospital, Providence, Rhode Island.

Nature and Probable Consequences—A patient was prescribed a dose of 8 Gy (800 rad) to the coronary artery during a Cordis Checkmate IVB procedure using 10 Ir-192 seeds, 8991 MBq (243 mCi). On January 31, 2002, during a review of dosimetry and physician records, the licensee discovered that the diameter of the artery was used in the treatment plan calculation instead of the radius. This error resulted because the physicians (authorized users) using the CORDIS device were more familiar with the procedures for a NOVOSTE device also in use at this institution. The Novoste device uses the diameter of the artery in the dosimetry calculations whereas the Cordis device uses the radius. The authorized user provided the wrong dimension (diameter instead of radius) which led to an incorrect dose being calculated. As a result the patient received an actual dose of 14.6 Gy (1,460 rad) to the outer coronary artery site instead of the prescribed 8 Gy (800 rad). The licensee indicated that there will probably be no adverse health effect to the patient.

Cause or Causes—As stated, the misadministration occurred due to human error in the use of the diameter of the artery instead of the radius of the vessel as required when using the Cordis system. The physicians' (authorized users) familiarity with the procedures for a Novoste device was a contributing factor.

Actions Taken To Prevent Recurrence

Licensee—The licensee informed the State of Rhode Island the next day by telephone of the potential misadministration and provided a written report of the incident on February 14, 2002. In-service training has been conducted concerning the misadministration. In addition, the prescription form has been modified to indicate if the radius or the diameter of the vessel is being used for the treatment plan.

State Agency—The Agency has been in contact with the licensee concerning this matter and the effectiveness of the corrective measures implemented. The licensee indicated that there will probably be no adverse health effects to the patient. To date there has been no recurrence of the problem.

This event is closed for the purpose of this report.

AS 02–5 Strontium-90 Eye Applicator Brachytherapy at South Broward Hospital District in Hollywood, Florida

Date and Place—January 4, 2002; South Broward Hospital District, Hollywood, Florida.

Nature and Probable Causes—A patient was prescribed radiation treatment for pterygium in his left eye. The patient was to receive a total dose of 30 Gy (3,000 rad) in three 10 Gy (1,000 rad) fractions spaced approximately a week apart. Due to human error, the third and final fraction, given on January 4, 2002, was 24.84 Gy (2,484 rad) instead of the prescribed 10 Gy (1,000 rad).

The prescribed dose was to be administered via a 3M Company Model 6D1A eye applicator using a 973 MBq (26.3 mCi) strontium-90 (Sr-90) source. The written directive called for each fraction to consist of a treatment duration of 44 seconds to deliver a 10 Gy (1,000 rad) dose. The correct fractionated dose was administered as planned on December 20, 2001, and December 28, 2001. A routine administration of the eye applicator required one person to time the event with a stopwatch while the authorized user administered the dose. The nurse and the authorized user became distracted in conversing with the patient and lost track of the time. The stopwatch used was the old style that simply counted time up and the nurse lost focus in trying to make the patient more comfortable and at ease. The authorized user had to remind the patient to gaze in a certain direction to treat the affected area. As a result, the third fractionated treatment time was 109 seconds instead of the prescribed 44 seconds resulting in a dose of 24.84 Gy (2,484 rad).

The patient was counseled about the slight increase in late effects including cataract formation and scleral scar tissue formation.

Cause or Causes—The State found and the licensee agreed that the misadministration occurred due to human error and the failure of staff to attend to details as required in licensee's procedures.

Actions Taken To Prevent Recurrence

Licensee—The licensee has identified and made changes in their procedures for use of the Sr-90 ophthalmic applicator. The facility purchased a digital stopwatch that has a large display, counts time down and not up, audiblizes the time in the last 10 seconds, and alarms at the end of treatment. In addition, the nurse has been counseled and all personnel have received training in the revised procedures using the new stopwatch.

State Agency—The Florida Bureau of Radiation Control performed an on-site investigation on February 7, 2002, to review the licensee's corrective actions, which were found adequate by the State. The State also determined that while the patient was informed verbally of the misadministration, the licensee did not inform the patient in writing as required. The licensee was cited for failure to notify the patient in writing within 15 days.

This event is closed for the purposes of this report.

AS 02–6 Industrial Radiography Occupational Overexposure at Technical Welding Laboratory, Inc. in Houston, Texas

Date and Place—April 10, 2002, Technical Welding Laboratories Inc., Houston, Texas.

Nature and Probable Consequence—On April 10, 2002, a radiographer received an overexposure calculated at 0.70 Sv (70 rem) due to handling his radiographic equipment with the source in an unshielded condition.

The exposure occurred while conducting radiography using an Amersham 660 radiography exposure device (camera) containing a 1.30 TBq (35 Ci) cobalt-60 (Co-60) radiography source. At the conclusion of a radiograph, the radiographer cranked the source to the shielded position without conducting a survey and then repositioned the source guide tube for the next radiograph. When he attempted to crank out the source for the next radiograph, the radiographer realized the source had not been retracted to its fully shielded position and was contained at the end of the guide tube. The radiographer notified the Radiation Safety Officer and returned to the office. The licensee then notified the State of Texas. While being interviewed for the event, the radiographer stated that although the camera's automatic locking mechanism was inoperable while performing radiography, he did not stop work and proceeded to complete the job. Subsequently, the licensee hired a consultant to check the equipment's operability and found no problem. The equipment was placed back in service with no repair necessary.

The radiographer was sent to a doctor, underwent blood tests and participated in a chromosome aberration study. Although the blood tests results were negative, the chromosome aberration study indicated a radiation exposure ranging from 0.70 Sv (70 rem) to 1.52 Sv (152 rem) with a 95-percent confidence level. In addition, due to the radiographer's difficulty in performing a good reenactment, a dose calculation of the exposure was difficult, however a consultant determined that an exposure of 0.70 Sv (70 rem) did occur. Although the radiographer stated that he could have possibly touched the end of the guide tube where the source was located, no erythema or blistering of the hand, as expected with an incident of this type was seen. A second consultant conducted calculations for a possible extremity exposure which resulted, in a possible 2.01 Sv (201 rem) exposure to the right hand.

Cause or Causes—It was determined that the cause of the overexposure involved the radiographer's failure to: (1) Wear his alarming rate meter; and (2) wear a personnel monitoring device.

Actions Taken To Prevent Recurrence

Licensee—The licensee terminated the radiographers employment and reviewed the incident with other radiographers employed by the company. A licensee consultant evaluation of the equipment determined that the camera was functioning properly.

State Agency—The licensee and radiographer were cited for not performing a lockout survey after a radiographic exposure, not using an alarming rate meter during radiographic operations; not using a collimator during radiographic operations and not using an individual monitoring device during radiographic operations. The licensee was also cited for allowing an individual to receive an exposure in excess of regulatory limits.

The licensee has since terminated its license and the radiographer no longer

works in the industrial radiography industry.

This event is closed for the purposes of this report.

AS 02–7 Diagnostic Misadministration at Cedars-Sinai Medical Center in Los Angeles, California

Date and Place—May 29, 2002, Cedars-Sinai Medical Center in Los Angeles, California.

Nature and Probable Consequences—A patient was erroneously administered 111 MBq (3 mCi) of iodine-131 (I–131) for a neck scan instead of receiving a diagnostic uptake scan of 7.4 MBq (0.2 mCi) of iodine-123 (I–123). This resulted in a dose of 30.8 Gy (3,087 rad) from the I–131 to the patient's remaining thyroid tissue, rather than 0.07 Gy (7 rad) that would have resulted from the prescribed I–123.

The elderly patient was from another country, had some language difficulties, and had no medical records. The patient had a scar on her neck, and answered affirmatively when the referring physician (who was not an endocrinologist) asked if she had a thyroidectomy. Because there were no medical records, and because she had symptoms indicating a potential thyroid dysfunction, the referring physician ordered a ''thyroid scan,'' and in the referral noted that the patient had a thyroidectomy. A temporary scheduling clerk at the administering hospital noted the thyroidectomy information and, after conferring with a nuclear medicine technologist (NMT), scheduled a dosage of 111 MBq (3 mCi) of I–131 for the patient. When the patient arrived at the licensee's facility, the NMT received confirmation from the patient that a scar on the patient's neck was the result of a thyroidectomy, the NMT proceeded to administer the scheduled neck scan with I–131. Neither the temporary scheduling clerk nor the NMT consulted with the authorized user or the referring physician to confirm their use of 111 Mbq (3 mCi) of I–131 instead of 7.4 MBq (0.2 mCi) of I–123. It was determined later that the patient had only a partial thyroidectomy, with approximately 50 percent of her thyroid mass remaining. The dose to the patient's remaining thyroid tissue 30.87 Gy (3,087 rad) from the I–131, instead of 0.07 Gy (7 rad) had I–123 been administered. Because of a possible reduction of thyroid function, the patient's physician will follow her medical needs.

Cause or Causes—The misadministration occurred due to human errors and inadequate procedures. The patient had language barriers that impeded clear communication with medical providers and licensee staff failed to consult the authorized user to obtain clarification from the referring physician. Finally, training and written instructions were not adequate to have prompted the temporary scheduling clerk or the NMT to seek appropriate assistance to resolve the dosage scheduled and administered.

Actions Taken To Prevent Recurrence

Licensee—Corrective actions taken to prevent recurrence included modifying the Nuclear Medicine Department procedures and ensuring that scheduling for all I–131 administrations, no matter what the activity, are performed by the Thyroid Treatment Coordinator or by the Chief, NMT.

State Agency—The California Department of Health Services has reviewed and approved the licensee's corrective actions. The State is considering enforcement actions.

This event is closed for the purposes of this report.

Dated in Rockville, Maryland, this 14th day of April, 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form F–9; OMB Control No. 3235–0377; SEC File No. 270–333. Form F–10; OMB Control No. 3235–0380; SEC File No. 270–334.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Form F–9 is a registration statement under the Securities Act of 1933 that is used to register investment grade debt or investment grade preferred securities that are offered for cash or in connection with an exchange offer and either non-convertible or not convertible for a period of at least one year from the date of issuance and, except as noted in paragraph (E), are thereafter only convertible into a security of another class of the issuer. The purpose of the information collection is to permit verification of compliance with securities law requirements and to assure the public availability and dissemination of such information. The principal function of the Commission's forms and rules under the securities laws' disclosure provisions is to make information available to the investors. Approximately 18 respondents file Form F–9 annually and at 25 hours per response for a total of 450 annual burden hours. It is estimated that 25% of the 450 annual burden hours (113 burden hours) is prepared by the company. Form F–9 is a public document. All information provided is mandatory. Finally, persons who respond to the collection of information contained in Form F–9 are not required to respond unless the form displays a currently valid control number.

Form F–10 is a registration statement under the Securities Act of 1933 that is used by certain Canadian ''substantial issuers''—those issuers with at least 36 calendar months of reporting history with a securities commission in Canada and a market value of common stock of at least $360 million (Canadian) and an aggregate market value of common stock held by non-affiliates of at least $75 million (Canadian). The purpose of the information collection is to facilitate cross-border offerings by specified Canadian issuers. Approximately 25 respondents file Form F–10 annually and at approximately 25 hours per response for a total of 625 annual burden hours. It is estimated that 25% of the 625 total burden hours (156 burden hours) is prepared by the company. Form F–10 is a public document. All information provided is mandatory. Finally, persons who respond to the collection of information contained in Form F–10 are not required to respond unless the form displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 11, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9589 Filed 4–17–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 17848, April 11, 2003].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Friday, April 11, 2003 at 11 a.m.; Tuesday, April 15, 2003 at 10 a.m.

CHANGE IN THE MEETING: Cancellation/Time Change/Additional Item.

The Closed Meeting scheduled for Friday, April 11, 2003 at 11 a.m. was cancelled.

The Closed Meeting scheduled for Tuesday, April 15, 2003 at 10 a.m. has been changed to Tuesday, April 15, 2003 at 11 a.m.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

The subject matter of the additional item added to the Closed Meeting of April 15, 2003 will be: Regulatory matter bearing enforcement implications.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: April 14, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–9670 Filed 4–15–03; 4:12 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 21, 2003: Closed Meetings will be held on Tuesday, April 22, 2003 at 2:30 p.m., and Wednesday, April 23, 2003 at 12 p.m. Open meetings will be held on Wednesday, April 23, 2003 at 10 a.m., in Room 6600 and on Thursday, April 24, 2003 at 10 a.m., in Room 6600.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (5), (7), (8), (9)(B) and (10) and 17 CFR 200.402(a) (5), (7), (8) (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, April 22, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Formal orders of investigation;

The subject matter of the Open Meeting scheduled for Wednesday, April 23, 2003 will be:

1. The Commission will hear oral argument on an appeal by the Division of Enforcement from an initial decision of an administrative law judge. The law judge found that a tender offer conducted by WHX Corporation, a Delaware corporation with its principal place of business in New York City, did not violate Rule 14d–10(a)(1) of the Securities Exchange Act of 1934. Rule 14d–10(a)(1) requires that tender offers be open to all security holders of the class of securities subject to the offer.

The Division contends that WHX Corporation violated Rule 14d–10(a)(1) when it offered to purchase shares of a target company from only shareholders of record with respect to an upcoming shareholders' meeting of the target company or shareholders who had obtained a proxy to vote the shares from a shareholder of record. The Division seeks an order that WHX Corporation cease and desist from committing or causing any violations or future violations of Rule 14d–10(a)(1).

Among the issues likely to be considered are:

a. Whether respondents committed the alleged violations; and

b. If so, whether sanctions should be imposed in the public interest.

2. The Commission will also hear oral argument on an appeal by Wheat First Securities, Inc. f/k/a First Union Capital Markets Corporation (''First Union''), a registered broker-dealer that conducted a municipal securities business, and its former assistant vice-president, Teressa L. Cawley, a registered municipal securities principal.

The law judge found that First Union through Cawley entered into a financial advisory agreement with Broward County, Florida, to assist the County in refunding certain municipal bond issues. As part of the agreement, First Union warranted that it had not retained any person not regularly employed by it to secure the agreement or paid compensation to any person based on the award of the agreement. The law judge found that this warranty was false, and that First Union and Cawley had paid a South Florida lobbyist to obtain the agreement. Nevertheless, the law judge concluded that the five-year statute of limitations in 28 U.S.C. 2462 barred the Division of Enforcement's action for sanctions based on the false warranty. The law judge found further that First Union and Cawley dealt unfairly and deceptively with the County in connection with two of three refundings by purposely failing to disclose payments made to the lobbyist in closing documents filed with the State.

The law judge suspended Cawley from association with any broker, dealer, or municipal securities dealer for three months; ordered First Union and Cawley to cease and desist for a three-year period from committing or causing violations or future violations of MSRB Rule G–17 and Section 15B(c)(1) of the Securities Exchange Act of 1934; assessed civil penalties of $20,000 against First Union and $15,000 against Cawley; and ordered First Union to disgorge $114,493.31.

Among the issues likely to be argued are:

a. Whether MSRB Rule G–17 applies to a municipal securities dealer acting as financial advisor to an issuer;

b. Whether scienter is required to establish an MSRB Rule G–17 violation;

c. Whether cease-and-desist and disgorgement orders are ''penalties'' within the meaning of 28 U.S.C. § 2462, and thus barred by the statute of limitations;

d. Whether the Commission should impose time-limited cease-and-desist orders; and

e. Whether and to what extent the Commission should order First Union to disgorge its revenues from the refundings.

The subject matter of the Closed Meeting scheduled for Wednesday, April 23, 2003 will be: Post-Argument Discussion.

The subject matter of the Open Meeting scheduled for Thursday, April 24, 2003 will be:

1. The Commission will consider whether to adopt amendments to implement Section 303 of the Sarbanes-Oxley Act of 2002. Section 303(a) prohibits an issuer's officers, directors, and persons acting under the direction of an officer or director, from taking any action to fraudulently influence, coerce, manipulate or mislead the auditor of the issuer's financial statements for the purpose of rendering those financial statements materially misleading.

2. The Commission will consider whether to adopt new rules and rule amendments to implement (a) the mandated electronic filing of reports required to be filed by officers, directors and principal security holders under Section 16(a) of the Securities Exchange Act of 1934; and (b) website posting of such reports by issuers, both of which are required by Section 16(a)(4) of the Exchange Act, as amended by Section 403 of the Sarbanes-Oxley Act of 2002.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: April 15, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–9703 Filed 4–16–03; 11:27 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47668; File No. SR–Amex–2003–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Transaction Charges for Certain Exchange Traded Funds

April 11, 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 31, 2003, the American Stock Exchange LLC (''Exchange'' or ''Amex'') 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 Amex. The Amex filed the proposed rule change as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend the Amex Equity Fee Schedule (1) to provide for customer transaction charges for the iShares S&P 100 Index Fund of $.0015 per share ($.15 per 100 shares), capped at $100 per trade; and (2) to suspend until April 30, 2003 exchange transaction charges in the iShares Lehman 1–3 year Treasury Bond Fund; iShares Lehman 7–10 year Treasury Bond Fund; Treasury 10 FITR ETF; Treasury 5 FITR ETF; Treasury 2 FITR ETF; and Treasury 1 FITR ETF for specialist, Registered Trader and broker-dealer orders.

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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Amex has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has suspended customer transaction charges until March 31, 2003 for the iShares S&P 100 Index Fund (Symbol: OEF), an Exchange Traded Fund that the Exchange trades pursuant to unlisted trading privileges.[6] The Exchange proposes to amend the Amex Equity Fee Schedule to provide that the customer transaction charges in OEF will be $.0015 per share ($.15 per 100 shares), capped at $100 per trade. This is one-fourth of the regular customer transaction charge for Index Fund Shares for which customer transaction charges have not been suspended (Index Fund Shares and other securities for which customer transaction charges have been suspended are set forth in Note 3 to the Amex Equity Fee Schedule). The regular charge is $.006 per share ($.60 per 100 shares), capped at $100 per trade. The Exchange believes that this fee level will encourage competition among markets trading OEF and enhance the Exchange's competitiveness in trading this security.

In addition, the Exchange is extending until April 30, 2003 the suspension of transaction charges in iShares Lehman 1–3 year Treasury Bond Fund (Symbol: SHY); iShares Lehman 7–10 year Treasury Bond Fund (Symbol: IEF); Treasury 10 FITR ETF (Symbol: TTE); Treasury 5 FITR ETF (TFI); Treasury 2 FITR ETF (TOU); and Treasury 1 FITR ETF (TFT) for specialist, Registered Trader and broker-dealer orders. The Exchange previously filed a suspension in such charges until November 30, 2002;[7] until December 31, 2002;[8] until January 31, 2003;[9] until February 28, 2003;[10] and until March 31, 2003.[11] The Exchange believes a suspension of fees for these securities is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission pursuant to Section 19(b)(3)(A) of the Act.[12]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[13] in general, and furthers the objectives of section 6(b)(4) of the Act[14] in particular, because it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Amex provided written notice to the Commission on March 18, 2003, that it intended to file this proposed rule change. The Amex also asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 47455 (March 6, 2003), 67 FR 12111 (March 13, 2003) (SR–Amex–2003–15).

[7] *See* Securities Exchange Act Release No. 46765 (November 1, 2002), 67 FR 68893 (November 13, 2002) (SR–Amex–2002–91).

[8] *See* Securities Exchange Act Release No. 46996 (December 13, 2002), 67 FR 78264 (December 23, 2002) (SR–Amex–2002–98).

[9] *See* Securities Exchange Act Release No. 47141 (January 8, 2003), 68 FR 2090 (January 15, 2003) (SR–Amex–2002–115).

[10] *See* Securities Exchange Act Release No. 47361 (February 13, 2003), 68 FR 8534 (February 21, 2003) (SR–Amex–2003–04).

[11] *See* Securities Exchange Act Release No. 47455 (March 6, 2003), 68 FR 12111 (March 13, 2003) (SR–Amex–2003–15).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

issuers and other persons using its facilities.

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 that is not necessary in furtherance of the purposes of the Act.

III. 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.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) [15] of the Act and Rule 19b–4(f)(6) [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission accelerate the operative date. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will enable the Amex to continue suspension of its exchange transaction charges, and allow for the reinstitution of a previously suspended customer transaction fee at one-fourth its original level as of April 1, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[17]

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2003–22 and should be submitted by May 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9590 Filed 4–17–03; 8:45 am]

BILLING CODE 8010–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47673; File No. SR–Amex–2003–08]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change by the American Stock Exchange LLC To Increase to Five Hundred Contracts the Maximum Permissible Number of Equity and Index Option Contracts Executable Through Auto-Ex

April 14, 2003.

I. Introduction

On February 10, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 increase to 500 contracts the maximum permissible number of equity and index option contracts in an order executable through its automatic execution system, Auto-Ex. On March 10, 2003, the proposed rule change was published for public comment in the **Federal Register**.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

In 1985, the Exchange implemented the Auto-Ex system, which automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the Amex Order File (''AOF''). There are, however, limitations on the number of option contracts that can be entered into or executed by these systems. AOF, which handles limit orders routed to the specialist's book as well as orders routed to Auto-Ex, allows for the entry of orders of up to 2500 option contracts.[4] Auto-Ex, however, is only permitted to execute equity option orders and index option orders of up to 250 contracts.[5] As a result, market and marketable limit orders of more than 250 contracts are routed by AOF to the specialist's book.

The Exchange now proposes to increase to 500 contracts the maximum permissible number of equity and index option contracts in an order that can be executed through the Auto-Ex system. It is proposed that this increase to 500 contracts in permissible order size for Auto-Ex be implemented on a case-by-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such an increase appropriate. Currently, the Amex posts applicable quote size parameters on its web page and represents that it will continue to do so. The Exchange represents that it has sufficient systems capacity necessary to accommodate implementation of the proposed increase.

Under Commentary .03 to Amex Rule 933,[6] the Exchange is permitted to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47429 (March 3, 2003), 68 FR 11418.

[4] *See* Securities Exchange Act Release No. 44065 (March 12, 2001), 66 FR 15513 (March 19, 2001).

[5] See Securities Exchange Act Release No. 45628 (March 22, 2002), 67 FR 15262 (March 29, 2002). The Amex notes that the Auto-Ex guarantee size for Nasdaq-100 Tracking Stock (''QQQ'') options is up to 2,000 contracts for the two near-term expiration months and 1,000 contracts for all other expiration months. *See* Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002).

[6] *See* Amex Rule 933, Commentary .03; *see also* Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002).

increase the size of Auto-Ex eligible orders for classes of multiply-traded options to match the automatic execution order size of any other options exchange, provided that the Exchange files with the Commission a proposed rule change pursuant to Section 19(b)(3)(A) of the Act.[7] In April 2002, pursuant to Amex Rule 933, Commentary .03 and Section 19(b)(3)(A) of the Act, the Amex filed a proposed rule change with the Commission to increase its Auto-Ex eligible order size for QQQ options to up to 2,000 contracts for the two near-term expiration months and 1,000 contracts for all other expiration months in order to match Primary Market Makers' size guarantees in QQQ options on the International Securities Exchange, Inc. (''ISE'').[8] Since April 29, 2002, the Exchange represents that it has established an Auto-Ex eligible order size of 1,000 contracts for all QQQ options series. The Exchange states that, to date, it is unaware of any increased risks to market participants and the marketplace as a result of the greater Auto-Ex eligible order size for QQQ options.

The Exchange also believes that the current Auto-Ex eligible order size of up to 250 contracts for all other options classes at the Exchange has similarly not created greater financial risks or other known system difficulties. The Exchange has set the Auto-Ex order size to the 250-contract maximum in a number of actively-traded option classes that, the Exchange believes, are the classes with the greatest liquidity and trading interest. The Exchange notes that options in Microsoft Corporation (MSFT) and General Electric Co. (GE) have Auto-Ex order sizes of 250 contracts. The Exchange states that market participants have further indicated that even larger sizes would provide greater benefits to their customers and proprietary trading strategies. The Exchange maintains that an increase in the permissible size of orders executable through Auto-Ex will provide more efficient executions due to the speed of execution obtained by Auto-Ex versus manual handling. The Exchange states that customers and other market participants are increasingly demanding that the Exchange automatically execute larger option order sizes that in the past would have received manual handling. The Exchange believes that an increase in the Auto-Ex eligible order size of up to 500 contracts will meet this demand of the marketplace.

The Exchange's Auto-Ex system provides that all customer and broker-dealer market and marketable limit orders within the appropriate size parameters are executed at the prevailing best bid or offer, with both the specialist and registered options traders (''ROTs'') as the contra-party to the transaction. Auto-Ex trades are automatically allocated on a rotating basis to the specialist and to each ROT that has signed on to Auto-Ex.[9] If an Auto-Ex trade is greater than ten contracts, the Auto-Ex system divides the execution into lots of ten or fewer contracts and allocates a lot to each Auto-Ex participant.[10] Accordingly, for actively-traded option classes in large trading crowds, the Auto-Ex allocation of executed contracts into lots of 10 contracts operates so that an Auto-Ex size of 250 contracts would be spread out among several ROTs, thereby significantly reducing the potential financial risk that a single ROT may incur. The Exchange believes that an increase of the Auto-Ex eligible size to 500 contracts will not significantly increase the financial risks of ROTs for such actively-traded option classes.

The Exchange believes that market participants desire and will support an increase in Auto-Ex eligible sizes of up to 500 contracts. The Exchange represents that, as of April 29, 2002, it has established an Auto-Ex size of 1,000 contracts for all QQQ options series. The Amex believes that the proposed increase in Auto-Ex eligible size for all other options is necessary in order for the Exchange to address market demands and for the purpose of competing effectively with other options exchanges that may not be so restricted.

The Amex notes that the Chicago Board Options Exchange, Inc. (''CBOE'') has received regulatory approval, with respect to option classes that disseminate quotations with size, to automatically execute orders in such options through its RAES system up to the disseminated size, which may be larger than 250 contracts.[11] Furthermore, the Amex notes that the ISE automatically executes a customer order for the disseminated quote size once such order hits the available option quote.[12] The Amex notes that, as a result, the disseminated size for a particular option quote is the actual size of an order that will be automatically executed. Accordingly, the Amex believes that, based on competitive considerations, an increase in the maximum Auto-Ex eligible order size will provide customers with increased opportunities for better and more efficient executions.

The Exchange represents that Auto-Ex has been successful in enhancing execution and operational efficiencies for certain option classes. The Exchange believes that automatic executions of orders for up to 500 contracts will allow for the quick, efficient execution of public customer orders, as well as broker-dealer orders on a case-by-case basis consistent with the Exchange's recent ability to provide automatic executions of broker-dealer transactions.[13]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act.[14] Among other provisions, section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions, 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.[15]

While increasing the maximum order size limit from 250 contracts to 500 contracts for automatic execution eligibility by itself does not raise concerns under the Act, the Commission believes that this increase

[7] 15 U.S.C. 78s(b)(3)(A).

[8] *See* Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002). The Amex rule change with respect to maximum Auto-Ex size for the QQQ options was filed with the Commission as a proposed rule change effective on filing pursuant to Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A).

[9] At the start of each trading day, the order in which trades are allocated to the specialist and traders signed on to Auto-Ex is randomly determined.

[10] For example, an option class that allows up to 50 contracts to be executed through Auto-Ex would have a trade of 25 contracts divided into lots of 10, 10 and 5. *See* Securities Exchange Act Release No. 47229 (January 22, 2003), 68 FR 5060 (January 31, 2003) (File No. SR–Amex–00–30).

[11] *See* Securities Exchange Act Release No. 45676 (March 29, 2002), 67 FR 16478 (April 5, 2002) (CBOE File No. 2001–70); *see also* CBOE Rule 6.8 (c)(v) and Commentary .09 to CBOE Rule 6.8.

[12] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000). The ISE operates an electronic marketplace where orders and quotes are entered into a central order book. Trades are then executed automatically when orders and quotes match.

[13] *See* Securities Exchange Act Release No. 46479 (September 10, 2002) 67 FR 58654 (September 17, 2002).

[14] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

raises collateral issues that the Amex will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for Auto-Ex. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed on to the Amex's Auto-Ex system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price; however, these risks are somewhat offset by the fact that the Exchange's Auto-Ex system allocates executed contracts into lots of 10 contracts among the specialist and any ROTs logged onto Auto-Ex.

In addition, when the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through Auto-Ex, the greater the risk market makers must be willing to accept. The Commission does not believe that, because Amex floor governors or senior floor officials determine to approve orders as large as 500 contracts as eligible for Auto-Ex, Amex floor governors or senior floor officials or Amex staff should disengage Auto-Ex more frequently by, for example, declaring an ''unusual market condition.'' Disengaging Auto-Ex can negatively affect investors by making it slower and less efficient to execute their orders.[16] It is the Commission's view that the Amex, when increasing the maximum size of orders that can be sent through Auto-Ex, should not disadvantage all customers—the vast majority of whom enter orders for less than 500 contracts—by making their automatic execution systems less reliable.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5).[17]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Amex–2003–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9593 Filed 4–17–03; 8:45 am]

BILLING CODE 8010–01–P

[16] *See* Amex Rule 933(f)(i), specifying the circumstances in which Auto-Ex may be disengaged or operated in a manner other than the normal manner.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47664; File No. SR–PCX–2003–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. and Amendment No. 1 Thereto Regarding the Maximum Permissible Number of Nasdaq-100 Tracking Stock (''QQQ'') Option Contracts Executable Through the Exchange's Automatic Execution System (''Auto-Ex'')

April 10, 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 27, 2003, the Pacific Exchange, Inc. (''Exchange'' or ''PCX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I and II below, which items have been prepared by the PCX. The proposed rule change has been filed by the PCX as a ''non-controversial'' rule change under rule 19b–4(f)(6) under the Act.[3] On April 7, 2003, the PCX filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this 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

PCX proposes to amend its rules to increase to 2,000 contracts in the first two near term expiration months, and to 1,000 contracts for all other expiration months, the maximum permissible number of QQQ option contracts in an order that can be executed through Auto-Ex.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized.*

* * * * *

Automatic Execution System

Rule 6.87(a)–(b)(5)—No change.

(6) The OFTC or its delegate consisting of two Floor Officials shall determine the size of orders that are eligible to be executed on Auto-Ex. The OFTC or its delegate, two Floor Officials, may approve requests of the Lead Market Makers to execute orders on Auto-Ex in sizes greater than 20 contracts. Although the order size parameter may be changed on an issue-by-issue basis by the OFTC or its delegate, two Floor Officials, the maximum order size for execution through Auto-Ex is as follows:

(A) Equity Options: the maximum order size for execution through Auto-Ex for equity options is 250 contracts *except for options on the Nasdaq-100 Tracking Stock (QQQ) in which case, the maximum order size will be 2,000 contracts in the first two (2) near term expiration months and 1,000 contracts for all other expiration months;*

(B) Index Options: the maximum order size for execution through Auto-Ex is 250 contracts.

(7)—No change.

(c)–(p)—No change.

Commentary .01–.08—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX 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 PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase the maximum order size eligibility for Auto-Ex in the first two near term expiration months in QQQ options to 2,000 contracts and to 1,000 contracts

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 4, 2003. In Amendment No. 1, PCX amended the proposed rule text of the proposed rule change to reflect the current rule language of PCX rule 6.87.

for all other expiration months [5] to match the size of orders in the same options eligible for automatic execution on another options exchange.[6] The Exchange notes that the American Stock Exchange LLC (''Amex'') and the Philadelphia Stock Exchange, Inc. (''Phlx'') allow automatic executions in QQQ options for a size of up to 2,000 contracts in series in the two near term expiration months, and up to 1,000 contracts in all other expiration months.[7] The Exchange represents that Auto-Ex affords prompt and efficient automatic executions at the disseminated quotation price on the Exchange. Therefore, the Exchange believes that increasing automatic execution levels for eligible orders in QQQ options to 2,000 contracts in the first two near term expiration months, and to 1,000 contracts for all other expiration months should provide the benefits of automatic execution to a larger number of customer orders. Further, the Exchange notes that this increase in automatic execution levels in QQQ options should enable the Exchange to remain competitive for order flow with other exchanges that trade QQQ options.

The Exchange believes that the increase in order size eligibility for Auto-Ex orders in QQQ options should provide customers with quicker executions for a larger number of orders by providing automatic rather than manual executions, thereby reducing the number of orders subject to manual processing. The Exchange also believes that increasing the Auto-Ex maximum order size in QQQ options should not impose a significant burden on the operation or capacity of the Auto-Ex System and will give the Exchange better means of competing with other options exchanges for order flow.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act [8] in general, and furthers the objectives of section 6(b)(5) of the Act [9] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

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 that is not necessary in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A) [10] of the Act and rule 19b–4(f)(6) [11] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[12] The PCX seeks to have the proposed rule change become operative immediately upon filing because it believes that the proposed rule change, as amended, is consistent with the protection of investors and the public interest, and in order to remain competitive with other exchanges with similar rules in effect.[13]

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, operative immediately upon filing to allow the PCX to compete with other options exchanges that currently has a maximum automatic execution eligibility limit in QQQ options of 2,000 contracts in the first two near term expiration months.[14] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written 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 PCX. All submissions should refer to File No. SR–PCX–2003–14 and should be submitted by May 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9594 Filed 4–17–03; 8:45 am]

BILLING CODE 8010–01–P

[5] Currently, the maximum option order size eligible for automatic execution via Auto-Ex is 250 contracts for all equity options including the QQQs.

[6] Exchange rule 6.87(b)(7) provides that the Options Floor Trading Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for Auto-Ex to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Commission pursuant to section 19(b)(3)(A) of the Act.

[7] *See* Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002) (File No. SR–Amex–2002–30); *see also* Securities Exchange Act Release No. 46531 (September 23, 2002), 67 FR 61370 (September 30, 2002) (File No. SR–Phlx–2002–47).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] As required under rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[13] *See supra* note 7.

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on April 7, 2003, the date that the Exchange filed Amendment No. 1.

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

AGENCY: U.S. Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 22 existing Small Business Development Centers (SBDCs) for refunding on October 1, 2003, subject to the availability of funds. Five states do not participate in the EO 12372 process; therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 120 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the address section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding within 30 days from the date of publication of this notice to the SBDC.

ADDRESSES:

Addresses of Relevant SBDC State Directors

Mr. Robert McKinley, Region Director, University of Texas at San Antonio, 145 Duncan Drive, Suite 200, San Antonio, TX 78226, (210) 458–2450.

Mr. Conley Salyer, State Director, West Virginia Development Office, 950 Kanawha Boulevard, East Charleston, WV 25301, (304) 558–2960.

Mr. Clinton Tymes, State Director, University of Delaware, One Innovation Way, Suite 301, Newark, DE 19711, (302) 831–2747.

Ms. Carmen Marti, SBDC Director, Inter American University of Puerto Rico, Ponce de Leon Avenue, #416, Edificio Union Plaza, Seventh Floor, Hato Rey, PR 00918, (787) 763–6811.

Mr. Michael Young, Region Director, University of Houston, 2302 Fannin, Suite 200, Houston, TX 77002, (713) 752–8425.

Ms. Becky Naugle, State Director, University of Kentucky, 225 Gatton College of Business Economics, Lexington, KY 40506–0034, (859) 257–7668.

Ms. Liz Klimback, Region Director, Dallas Community College, 1402 Corinth Street, Dallas, TX 75212, (214) 860–5835.

Ms. Rene Sprow, State Director, University of Maryland at College Park, 7100 Baltimore Avenue, Suite 401, Baltimore, MD 20742–1815, (301) 403–8300.

Mr. Craig Bean, Region Director, Texas Tech University, 2579 South Loop 289, Suite 114, Lubbock, TX 79423–1637, (806) 745–3973.

Ms. Diane Wolverton, State Director, University of Wyoming, P.O. Box 3922, Laramie, WY 82071, (307) 766–3505.

Mr. Max Summers, State Director, University of Missouri, Suite 300, University Place, Columbia, MO 65211, (573) 882–0344.

Mr. Jon Ryan, State Director, Iowa State University, 137 Lynn Avenue, Ames, IA 50010, (515) 292–6351.

Mr. James L. King, State Director, University of New York, SUNY Plaza, S–523, Albany, NY 12246, (518) 443–5398.

Ms. Holly Schick, State Director, Ohio Department of Development, 77 South High Street, Columbus, OH 43226–1001, (614) 466–2711.

Mr. Donald L. Kelpinski, State Director, Vermont Technical College, P.O. Box 188, Randolph Center, VT 05061–0188, (802) 728–9101.

Mr. Warren Bush, SBDC Director, University of the Virgin Islands, 8000 Nisky Center, Suite 720, St. Thomas, U.S. VI 00802–5804, (340) 776–3206.

FOR FURTHER INFORMATION CONTACT: Johnnie L. Albertson, Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, SW., Sixth Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with SBA, the general management and oversight of SBA, and a state plan initially approved by the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;

(b) Increase economic growth;

(c) Assist more small businesses; and

(d) Broaden the delivery system to more small businesses.

SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC service centers. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate service centers so that they are as accessible as possible to small businesses;

(b) Open all service centers at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) Develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) Maintain lists of private consultants at each service center.

Dated: April 10, 2003.

Johnnie L. Albertson,

Associate Administrator for Small Business Development Centers.

[FR Doc. 03–9539 Filed 4–17–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Overhead Fiber Optic Groundwire and Ancillary Hardware Components.

SUMMARY: The U. S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Overhead Fiber Optic Groundwire and Ancillary Hardware Components. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before April 28, 2003.

Address comments to: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC, 20416, Tel: (202) 619–0422.

FOR FUTHER INFORMATION CONTACT: Edith Butler, Program Analyst, (202) 619–0422 FAX (202) 205–7280.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems.

The first coding system is the Office of Management and Budget *North American Industry Classification System (NAICS).* The second is the Product and Service Code established by the Federal Procurement Data System.

The U.S. Small Business Administration is currently processing a request to waive the Nonmanufacturer Rule for Overhead Fiber Optic Groundwire, NAICS 335921 and Ancillary Hardware Components, NAICS 334417. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 03–9537 Filed 4–17–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Other Ordnance and Accessories Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Other Ordnance and Accessories Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before April 28, 2003.

ADDRESSES: Address comments to Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC, 20416. Tel: (202) 619–0422.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, (202) 619–0422 FAX (202) 205–7280.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems.

The first coding system is the Office of Management and Budget *North American Industry Classification System (NAICS)* The second is the Products and Service Code established by the Federal Procurement Data System.

The U.S. Small Business Administration is currently processing a request to waive the Nonmanufacturer Rule for Other Ordnance and Accessories Manufacturing, North American Industry Classification System (NAICS) 332995. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 03–9538 Filed 4–17–03; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 4303]

Notice of Meeting of the United States International Telecommunication Advisory Committee To Prepare for ITU Study Group 16 Meeting, May 6, 2003

The Department of State announces that the meeting of the U.S. International Telecommunication Advisory Committee (ITAC), to discuss

the International Telecommunication Union (ITU) Study Group 16 meeting to be held in Geneva from May 20 to May 30, has been changed from April 30th to May 6. The purpose of the ITAC meeting is to advise the Department on policy, technical and operational issues that will be considered by Study Group 16. The time and location of the ITAC meeting will be announced via e-mail. People may join the e-mail broadcast list by sending a request to *YoungLM2@state.gov* or calling (202) 647–2593.

Dated: April 9, 2003.

Anne Jillson,

Foreign Affairs Officer, International Communications and Information Policy, Department of State.

[FR Doc. 03–9632 Filed 4–17–03; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 4304]

Advisory Committee on Labor Diplomacy; Notice of Meeting

The Advisory Committee on Labor Diplomacy (ACLD) will hold a meeting beginning at 9 a.m. on May 2, 2003, in room 1105, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. Committee Chairman Thomas R. Donahue, former President of the AFL–CIO, will chair the meeting.

The ACLD is composed of prominent persons with expertise in the area of international labor policy and labor diplomacy. The ACLD advises the Secretary of State and the President on the resources and policies necessary to implement labor diplomacy programs efficiently, effectively and in a manner that ensures success in promoting the objectives and ideals of U.S. labor policies in the 21st century. The ACLD makes recommendations on how to strengthen the Department of State's ability to respond to the many challenges facing the United States and the federal government in international labor matters. These challenges include the protection of worker rights, the elimination of exploitative child labor, and the prevention of abusive working conditions.

The agenda for the May 2 meeting includes: the Committee's Labor Diplomacy Database Project, opportunities for labor diplomacy to enhance the Human Rights environments in the Arab and Muslim Worlds, discussion of implementation of the recommendations of the Committee's two reports on U.S. Labor Diplomacy, and options for the Committee's future areas of concentration.

Members of the public are welcome to attend the meeting as seating capacity allows. As access to the Department of State is controlled, persons wishing to attend the meeting must be pre-cleared by calling or faxing the following information, by close of business April 30, to Kenneth Audroué at tel. (202) 647–4327, or fax (202) 647–0431, or e-mail *audrouek@state.gov*: name; company or organization affiliation (if any); date of birth; and social security number. Pre-cleared persons should use the C Street entrance to the State Department and have a driver's license with photo, a passport, a U.S. Government ID or other valid photo identification.

Members of the public may, if they wish, submit a brief statement to the Committee in writing. Those wishing further information should contact Mr. Audroué at the phone and fax numbers provided above.

Dated: March 15, 2003.

Lorne Craner,

Assistant Secretary, Bureau of Democracy, Human Rights and Labor, Department of State.

[FR Doc. 03–9760 Filed 4–17–03; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–14628]

Extension of Comment Period on Whether Nonconforming 1996 and 1997 Lamborghini Diablo Passenger Cars Are Eligible for Importation; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correction to notice of extension of comment period.

SUMMARY: This document corrects a document published on April 1, 2003 (68 FR 15794), notifying the public that NHTSA is extending the comment period on a petition for a decision whether nonconforming 1996 and 1997 Lamborghini Diablo passenger cars are eligible for importation. The document incorrectly stated that the comment period is extended until May 30, 2003. The closing date for comments should have been properly stated as May 2, 2003.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 15, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–9645 Filed 4–17–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2003–14307 (Notice No. 03–3)]

Agency Information Collection Activity Under OMB Review

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

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comments. The ICRs describe the nature of the information collections and their expected burden. The Federal Register notice soliciting comments on the following collections of information was published with a 60-day comment period on February 5, 2003 [68 FR 5972].

DATES: Comments must be submitted on or before May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, or T. Glenn Foster, 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.

Title: Rail Carrier and Tank Car Tank Requirements.

OMB Control Number: 2137–0559.

Type of Request: Extension of a currently approved collection.

Abstract: This information collection consolidates and describes the information collection provisions in parts 172, 173, 174, 179, and 180 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) on the transportation of hazardous materials by rail and the manufacture, qualification, maintenance and use of tank cars. The interested reader should refer to the table in 49 CFR 171.6 for a complete listing of sections covered by this information collection. The types of information collected include:

(1) *Approvals of the Association of American Railroads (AAR) Tank Car Committee:* An approval is required

from the AAR Tank Car Committee for a tank car to be used for a commodity other than those specified in part 173 and on the certificate of construction. This information is used to ascertain whether a commodity is suitable for transportation in a tank car. AAR approval also is required for an application for approval of designs, materials and construction, conversion or alteration of tank car tanks constructed to a specification in part 179 or an application for construction of tank cars to any new specification. This information is used to ensure that the design, construction or modification of a tank car or the construction of a tank car to a new specification is performed in accordance with the applicable requirements.

(2) *Progress Reports:* Each owner of a tank car subject to the requirements of § 173.31(b) shall submit a progress report to the Federal Railroad Administration (FRA). This information is used by FRA to ensure that all affected tank cars are modified before the regulatory compliance date.

(3) *FRA Approvals:* An approval is required from FRA to transport a bulk packaging (such as a portable tank, IM portable tank, intermediate bulk container, cargo tank, or multi-unit tank car tank) containing a hazardous material in container-on-flat-car or trailer-on-flat-car service other than as authorized by § 174.63. FRA uses this information to ensure that the bulk package is properly secured using an adequate restraint system during transportation. FRA approval is also required for the movement of any tank car that does not conform to the applicable requirements in the HMR. RSPA proposed (September 30, 1999; 64 FR 53169) to broaden this provision to include the movement of covered hopper cars, gondola cars, and other types of railroad equipment when they no longer conform to Federal law but may safely be moved to a repair location. These latter movements are currently being reported under the information collection for exemption applications.

(4) *Manufacturer Reports and Certificate of Construction:* These documents are prepared by tank car manufacturers and are used by owners, users and FRA personnel to verify that rail tank cars conform to the applicable specification.

(5) *Quality Assurance Program:* Facilities that build, repair and ensure the structural integrity of tank cars are required to develop and implement a quality assurance program. This information is used by the facility and DOT compliance personnel to ensure that each tank car is constructed or repaired in accordance with the applicable requirements.

(6) *Inspection Reports:* A written report must be prepared and retained for each tank car that is inspected and tested in accordance with § 180.509 of the HMR. Rail carriers, users, and the FRA use this information to ensure that rail tank cars are properly maintained and in safe condition for transporting hazardous materials.

Affected Public: Manufacturers, owners and rail carriers of tank cars.

Estimated Number of Respondents: 260.

Estimated Number of Responses: 16,640.

Annual Estimated Burden Hours: 2,759.

Frequency of Collection: Annually.

Title: Rulemaking, Exemption, and Preemption Requirements.

OMB Control Number: 2137–0051.

Type of Request: Extension of a currently approved collection.

Abstract: This collection of information applies to rulemaking procedures regarding the HMR. Specific areas covered in this information collection include part 105, subpart B and subpart C, ''Hazardous Materials Program Definitions and General Procedures,'' part 106, subpart B, ''Participating in the Rulemaking Process,'' part 107, subpart B, ''Exemptions,'' part 107, subpart C, ''Preemption.'' The Federal hazardous materials transportation law directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous materials in commerce. RSPA is authorized to accept petitions for rulemaking and appeals, as well as applications for exemptions, preemption determinations and waivers of preemption. The types of information collected include:

(1) *Petitions for Rulemaking:* Any person may petition the Office of Hazardous Materials Standards to add, amend, or delete a regulation in parts 110, 130, 171 through 180, or may petition the Office of the Chief Counsel to add, amend, or delete a regulation in parts 105, 106 or 107.

(2) *Appeals:* Except as provided in § 106.40(e), any person may submit an appeal to RSPA's actions in accordance with the Appeals procedures found in §§ 106.110 through 106.130.

(3) *Application for Exemption:* Any person applying for an exemption must include the citation of the specific regulation from which the applicant seeks relief; specification of the proposed mode or modes of transportation; detailed description of the proposed exemption (*e.g.*, alternative packaging, test procedure or activity), including as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents, *etc.*

(4) *Application for Preemption Determination:* Any person directly affected by any requirement of a State, political subdivision, or Indian tribe may apply to the Associate Administrator for a determination of whether that requirement is preempted under 49 U.S.C. 5125, or regulations issued thereunder. The application must include the text of the State or political subdivision or Indian tribe requirement for which the determination is sought; specify each requirement of the Federal hazardous material transportation law or the regulations issued thereunder with which the applicant seeks the State, political subdivision or Indian tribe requirement to be compared; explanation of why the applicant believes the State or political subdivision or Indian tribe requirement should or should not be preempted under the standards of § 5125 (*see also* 49 CFR 107.202); and how the applicant is affected by the State or political subdivision or Indian tribe requirements.

(5) *Waivers of Preemption:* With the exception of requirements preempted under 49 U.S.C. 5125(c), any person may apply to the Associate Administrator for a waiver of preemption with respect to any requirement that: (1) The State or political subdivision thereof or an Indian tribe acknowledges to be preempted under the Federal hazardous material transportation law or the regulations issued thereunder, or (2) that has been determined by a court of competent jurisdiction to be so preempted. The Associate Administrator may waive preemption with respect to such requirement upon a determination that such requirement affords an equal or greater level of protection to the public than is afforded by the requirement of the Federal hazardous material transportation law or the regulations issued thereunder, and does not unreasonably burden commerce.

The information collected under these application procedures is used in the review process by RSPA in determining the merits of the petitions for rulemakings and for reconsideration of rulemakings, as well as applications for exemptions, preemption determinations and waivers of preemption to the HMR. The procedures governing these petitions for rulemaking and for reconsideration of rulemakings are covered in subpart B of part 106.

Applications for exemptions, preemption determinations and waivers of preemption are covered under subparts B and C of part 107. Rulemaking procedures enable RSPA to determine if a rule change is necessary, is consistent with public interest, and maintains a level of safety equal to or superior to that of current regulations. Exemption procedures provide the information required for analytical purposes to determine if the requested relief provides for a comparable level of safety as provided by the HMR. Preemption procedures provide information for RSPA to determine whether a requirement of a State, political subdivision, or Indian tribe is preempted under 49 U.S.C. 5125, or regulations issued thereunder, or whether a waiver of preemption should be issued.

Affected Public: Shippers, carriers, packaging manufacturers, and other affected entities.

Estimated Number of Respondents: 3,304.

Estimated Number of Responses: 4,294.

Annual Estimated Burden Hours: 4,219

Frequency of Collection: Periodically.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to Office of Management and Budget, Attention: Desk Officer for RSPA, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 11, 2003.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 03–9646 Filed 4–17–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34303]

Dallas, Garland & Northeastern Railroad—Acquisition and Operation Exemption—The Kansas City Southern Railway Company

Dallas, Garland & Northeastern Railroad (DGNO), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate, pursuant to an agreement entered into between The Kansas City Southern Railway Company (KCS) and DGNO, 2.6 miles of rail line of KCS in West Dallas, TX, between milepost 3.0 and milepost 5.6, known as Hale Cement Spur near Dallas.

Because DGNO's projected annual revenues will exceed $5 million, DGNO certified to the Board on December 19, 2002, that it sent the required notice of the transaction to the national offices of all labor unions representing employees on the line and posted a copy of the notice at the workplace of the employees on the affected lines on December 19, 2002. *See* 49 CFR 1150.42(e).

The transaction was scheduled to be consummated on March 28, 2003, the effective date of the exemption (which is more than 60 days after DGNO's certification to the Board that it had complied with the Board's rule at 49 CFR 1150.42(e)).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34303, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gary A. Laakso, Vice President Regulatory Counsel, 5300 Broken Sound Boulevard, NW., Boca Raton, FL 33487 and Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 11, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–9463 Filed 4–17–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 227X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Russell County, VA

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 2.9-mile line of railroad between milepost CH–3.6 at Hurricane Junction and milepost CH–6.5 at Clinchfield, Russell County, VA.[1] The line traverses United States Postal Service Zip Code 24266.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 18, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental

[1] An exemption allowing NSR's predecessor, Norfolk and Western Railway Company, to discontinue service over this line was granted in 1990. *See Norfolk and Western Railway Company—Discontinuance Exemption—in Russell County, VA,* Docket No. AB–290 (Sub-No. 97X) (ICC served July 16, 1990).

issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 28, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 8, 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 NSR's representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510–2191.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 23, 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), NSR 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 NSR's filing of a notice of consummation by April 18, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

[2] 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.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* CFR 1002.2(f)(25).

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 8, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–9195 Filed 4–17–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 10, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 19, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0919.

Regulation Project Number: PS–105–75 Final.

Type of Review: Extension.

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

Description: These regulations require each partner to separately keep records of his share of the adjusted basis of partnership oil and gas property and require each partnership, trusts, estate, and operator to provide information necessary to certain persons to compute depletion with respect to oil and gas.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,500,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1 hour.

OMB Number: 1545–1434.

Regulation Project Number: CO–26–96 Final.

Type of Review: Extension.

Title: Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and with Respect to Controlled Groups.

Description: Section 382 limits the amount of income that can be offset by loss carryovers after an ownership change. These regulations provide rules for applying section 382 in the case of short taxable years and with respect to controlled groups.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 3,500.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 875 hours.

OMB Number: 1545–1502.

Form Number: IRS Forms 5304–SIMPLE and 5305–SIMPLE and Notice 98–4.

Type of Review: Extension.

Title: Form 5304-SIMPLE—Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (Not for Use With a Designated Financial Institution); Form 5305-SIMPLE—Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—(for Use With a Designated Financial Institution); and Notice 98–4—Simple IRA Plan Guidance.

Description: Form 5304-SIMPLE and 5305-SIMPLE are used by an employer to permit employees to make salary reduction contributions to a savings incentive match plan (SIMPLE IRA) described in Code section 408(p). These forms are not to be filed with IRS, but to be retained in the employers' records as proof of establishing such a plan, thereby justifying a deduction for contributions made to the SIMPLE IRA. The data is used to verify the deduction. Notice 98–4 provides guidance for employers and trustees regarding how they can comply with the requirements of Code section 408(p) in establishing and maintaining a SIMPLE Plan, including information regarding the notification and reporting requirements under Code section 408.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 600,000.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER:

Form/notice	Recordkeeping	Learning about the law or the form	Preparing the form
5304-SIMPLE	3 hr., 37 min	2 hr., 25 min	46 min
5305-SIMPLE	3 hr., 37 min	2 hr., 25 min	46 min
Notice 98–4	15 min.		

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 2,127,000 hours.

OMB Number: 1545–1539.

Regulation Project Number: REG–208172–91 Final.

Type of Review: Extension.

Title: Basis Reduction Due to Discharge of Indebtedness.

Description:The IRS will use the information provided by taxpayers owning interests in partnerships and owning section 1221(I) real property to verify compliance with sections 1017(b)(3)(C), 1017(b)(3)(E), 1017(b)(3)(F), and 1017(b)(4)(X).

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 2,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1,000.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 10,000 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–9614 Filed 4–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 14, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 19, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0274.

Form Number: IRS Form 2163(c).

Type of Review: Extension.

Title: Employment—Reference Inquiry.

Description: Form 2163(c) is used by IRS to verify past employment and to question listed and developed references as to the character and integrity of current and potential IRS employees. The information received is incorporated into a report on which a security determination is based.

Respondents: Business or other for-profit, Individual or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 20,000.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 4,000 hours.

OMB Number: 1545–1520.

Revenue Procedure Numbers: 2003–4, 2003–5, 2003–6 and 2003–8.

Type of Review: Extension.

Title: Revenue Procedure 2003–4: Letter Rulings. Revenue Procedure 2003–5: Technical Advice.

Revenue Procedure 2003–6: Determination Letters.

Revenue Procedure 2003–8: User Fees.

Description: The information requested in Revenue Procedure 2003–4, Revenue Procedure 2003–5, Revenue Procedure 2003–6 and Revenue Procedure 2003–8 is required to enable the Office of the Division Commissioner (Tax Exempt and Government Entities) of the Internal Revenue Service to give advice on filing letter ruling, determination letter, and technical advice requests, to process such requests, and to determine the amount of any user fees.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, State, Local or Tribal Government.

Estimated Number of Respondents: 83,068.

Estimated Burden Hours Per Respondent: 2 hours, 8 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 177,986 hours.

OMB Number: 1545–1535.

Revenue Procedure Number: Revenue Procedure 97–19.

Type of Review: Extension.

Title: Timely Mailing Treated as Timely Filing.

Description: Revenue Procedure 97–19 provides the criteria that will be used by the IRS to determine whether a private delivery service qualifies as a designated Private Delivery Service under section 7502 of the Internal Revenue Code.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 5.

Estimated Burden Hours Per Respondent: 613 hours, 48 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,069 hours.

OMB Number: 1545–1605.

Revenue Ruling Number: Revenue Ruling 2000–8.

Type of Review: Extension.

Title: Negative Elections in Section 401(k) Plans.

Description: Revenue Ruling 2000–8 describes certain criteria that must be met before an employee's compensation can be reduced and contributed to an employer's section 401(k) plan in the absence of an affirmative election by the employee.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 1,500.

Estimated Burden Hours Per Respondent: 1 hour, 10 minutes.

Frequency of Response: On occasion, Annually.

Estimated Total Reporting Burden: 1,750 hours.

OMB Number: 1545–1674.

Revenue Procedure Number: Revenue Procedure 2000–20.

Type of Review: Extension.

Title: Master and Prototype Plans.

Description: The master and prototype procedure sets forth the procedures for sponsors of master and prototype pension, profit-sharing and annuity plans to request an opinion letter from the Internal Revenue Service that the form of a master or prototype plan meets the requirements of section 401(a) of the Internal Revenue Code. The information requested in sections 5.14, 9.11, 12.02, 12.03, 15.02, 17.02, 18.06, 19.02 and 19.09 of the master and prototype revenue procedure is in addition to the information required with Forms 4461 (Application for Approval of Master of Prototype Defined Contribution Plan), 4461–A (Application for Approval of Master or Prototype Defined Benefit Plan), 4461–B (Application for approval of Master or Prototype or Plan (Master Submitter Adopting Sponsor)). This information is needed in order to enable the Employee Plans function of the Service's Tax Exempt and Government Entities Division to issue an opinion letter.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, State, Local or Tribal Government.

Estimated Number of Respondents: 266,530.

Estimated Burden Hours Per Respondent: 1 hour, 32 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 408,563 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 03–9615 Filed 4–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 14, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 19, 2003, to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0060.

Form Number: PD F 2488–1.

Type of Review: Extension.

Title: Certificate By Legal Representative(s) of Decedent's Estate, During Administration, of Authority to Act and Request Payment and/or Make Distribution Where Estate Holds No More Than $1,000 (face amount) U.S. Savings and Retirement Securities, Excluding Checks Representing Interest.

Description: PD F 2488–1 is used by legal representatives of decedent's estate to establish authority to act and to request disposition of securities.

Respondents: Individuals or households.

Estimated Number of Respondents: 6,300.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 1,575 hours.

OMB Number: 1535–0118.

Form Number: PD F 5336.

Type of Review: Extension.

Title: Application for Disposition.

Description: PD F 5336 is used by person(s) entitled to a decedent's estate not being administered to request payment or reissue of Savings Bonds/Notes and/or related checks.

Respondents: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 40,000 hours.

Clearance Officer: Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328, (304) 480–6553.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–9616 Filed 4–17–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 11, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officers listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 19, 2003, to be assured of consideration.

Internal Revenue Service (IRS) and Financial Crimes Enforcement Network (FinCEN)

OMB Numbers: 1545–0892 and 1506–0018.

Form Numbers: IRS Form 8300 and FinCEN Form 8300.

Type of Review: Revision.

Title: Report of Cash Payments Over $10,000 Received in a Trade or Business.

Description: Anyone in a trade or business who, in the course of such trade or business, receives more than $10,000 in cash or foreign currency in one or more related transactions must report it to the IRS and provide a statement to the payor. Any transaction which must be reported under title 31 on Form 4789 is exempted from reporting the same transaction on Form 8300.

The USA Patriot Act of 2001 (Pub. L. 107–56) authorized the Financial Crimes Enforcement Network to collect the information reported on Form 8300. In a joint effort to develop a dual use form, IRS and FinCEN worked together to ensure that the transmission of the data collected to FinCEN on Forms 8300 does not violate the provisions of section 6103.

Respondents: Business or other for-profit, farms, Federal government.

Estimated Number of Respondents/Recordkeepers: 70,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 21 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 87,757 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–

03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

Clearance Officer: Steve Rudzinski, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, (703) 905–3845.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–9617 Filed 4–17–03; 8:45 am]

BILLING CODE 4830–01–P; 4830–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8752

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8752, required Payment or Refund Under Section 7519.

DATES: Written comments should be received on or before June 17, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions this regulation should be directed to Allan Hopkins at (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Required Payment or Refund Under Section 7519.

OMB Number: 1545–1181.

Form Number: 8752.

Abstract: Partnerships and S corporations use Form 8752 to compute and report the payment required under Internal Revenue Code section 7519 or to obtain a refund of net prior year payments. Such payments are required of any partnership or S corporation that has elected under Code section 444 to have a tax year other than a required tax year.

Current Actions: There is no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 72,000.

Estimated Time Per Respondent: 7 hr., 52 min.

Estimated Total Annual Burden Hours: 565,920.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 10, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9641 Filed 4–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3520–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3520–A, Annual Information Return of Foreign Trust With a U.S. Owner.

DATES: Written comments should be received on or before June 17, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Annual Information Return of Foreign Trust With a U.S. Owner.

OMB Number: 1545–0160.

Form Number: 3520–A.

Abstract: Internal Revenue Code section 6048(b) requires that foreign trusts with at least on U.S. beneficiary must file an annual information return. Form 8520–A is used to report the income and deductions of the foreign trust and provide statements to the U.S. owners and beneficiaries. IRS uses Form 3820–A to determine if the U.S. owner of the trust has included the net income of the trust in its gross income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 43 hrs., 24 min.

Estimated Total Annual Burden Hours: 21,700.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9642 Filed 4–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4137

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4137, Social Security and Medicare Tax on Unreported Tip Income.

DATES: Written comments should be received on or before June 17, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Social Security and Medicare Tax on Unreported Tip Income.

OMB Number: 1545–0059.

Form Number: Form 4137.

Abstract: Form 4137 is used to figure the social security and Medicare tax owed on tips received by an employee but not reported to his or her employer, including any allocated tips shown on Form W–2 that must be reported as income. Form 4137 is also used to compute the social security and Medicare tips to be credited to the employee's social security record.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 76,000.

Estimated Time Per Respondent: 1 hr., 20 min.

Estimated Total Annual Burden Hours: 101,080.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9643 Filed 4–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4970

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4970, Tax on Accumulation Distributions of Trusts.

DATES: Written comments should be received on or before June 17, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*) Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tax on Accumulation Distribution of Trusts.

OMB Number: 1545–0192.

Form Number: 4970.

Abstract: Form 4970 is used by a beneficiary of a domestic or foreign trust to compute the tax adjustment attributable to an accumulation distribution. This form is used to verify whether the correct tax has been paid on the accumulation distribution.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 30,000.

Estimated Time Per Response: 3 hr., 13 min.

Estimated Total Annual Burden Hours: 96,600.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9644 Filed 4–17–03; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
April 18, 2003

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 107, 171, et al.

Hazardous Materials: Requirements for Cargo Tanks; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 177, 178, and 180

[Docket No. RSPA–98–3554 (HM–213)]

RIN 2137–AC90

Hazardous Materials: Requirements for Cargo Tanks

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

ACTION: Final rule.

SUMMARY: RSPA is adopting a number of revisions to the Hazardous Materials Regulations to update and clarify the regulations on the construction and maintenance of cargo tank motor vehicles. This final rule also addresses three National Transportation Safety Board (NTSB) recommendations and several petitions for rulemaking. These revisions will increase the safety of cargo tanks transporting hazardous materials, provide greater flexibility in design and construction of cargo tanks, and reduce operating burdens for owners, operators, and manufacturers of cargo tank motor vehicles.

DATES: *Effective date:* This final rule is effective October 1, 2003.

Voluntary compliance date: Voluntary compliance is authorized 30 days following publication of this final rule.

Incorporation by reference date: The incorporation by reference of publications listed in this final rule has been approved by the Director of the **Federal Register** as of October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Johnsen, Hazardous Materials Division, Federal Motor Carrier Safety Administration (FMCSA), telephone (202) 366–6121; Mr. Philip Olson, Office of Hazardous Materials Technology, RSPA, telephone (202) 366–4504; Ms. Susan Gorsky, Hazardous Materials Standards, RSPA, telephone (202) 366–8553; or Mr. Danny Shelton, Office of Enforcement and Program Delivery, Hazardous Materials Division, Federal Motor Carrier Safety Administration (FMCSA), telephone (202) 366–6121.

SUPPLEMENTARY INFORMATION:

I. Background
II. Revisions Applicable to All Cargo Tanks
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I. Background

On June 12, 1989, the Research and Special Programs Administration (RSPA; we) published a final rule in the **Federal Register** (Docket HM–183, 183A; 54 FR 24982) that revised the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 through 180) pertaining to cargo tank motor vehicles. We further revised the regulations each year from 1990 through 1995 under dockets HM–183, HM–183A, and HM–183C. Several of these dockets made significant changes to the cargo tank regulations to improve safety; other revisions corrected mistakes and made minor changes. Dockets HM–183 and 183A established the DOT 400 series cargo tank specifications, as well as certification requirements for cargo tank manufacturers. Docket HM–183C contained a number of miscellaneous items that clarified and relaxed certain requirements for the manufacture, qualification, and maintenance of cargo tank motor vehicles.

Under 49 CFR 1.73(d), the Federal Motor Carrier Safety Administration (FMCSA) is delegated authority to enforce the Hazardous Materials Requirements (HMR), with particular emphasis on highway transportation, including regulations for construction and maintenance of cargo tank motor vehicles (CTMVs). FMCSA and RSPA work closely with the regulated industry through educational assistance activities and FMCSA's compliance and enforcement program. As a result of these activities, we identified several areas in the current regulations that need updating or clarification. The Cargo Tank Technical Assistant Group, comprised of state enforcement officials along with members of FMCSA and RSPA, also identified areas where cargo tank regulations could be improved for safety or clarified to facilitate compliance. In addition, we received requests for clarification of the regulations and petitions for rulemaking. The National Transportation Safety Board (NTSB) has also made several safety recommendations concerning cargo tanks.

On December 4, 2001, we published a Notice of Proposed Rulemaking (NPRM; 66 FR 63096), proposing revisions that would apply to all cargo tanks and revisions that would apply to certain specification cargo tanks or cargo tanks used to transport certain ladings. This final rule adopts changes proposed in the NPRM as explained in detail below.

II. Revisions Applicable to All Cargo Tanks

Under Docket HM–183, we adopted a number of definitions for DOT 400-series specification CTMVs. The definitions apply to all specification CTMVs used to transport hazardous materials. In the NPRM we proposed to combine the definitions currently in § 178.345–1(c) with the definitions in § 173.320 (a) and make them applicable to all specification CTMVs. We received comments on the following issues:

A. Definitions

Cargo Tank. In the NPRM, we proposed in § 171.8 to add Intermediate Bulk Containers (IBCs) to the list of specifications that are not considered cargo tanks. The North American Transportation Consultants, Inc. (NATC) submitted comments expressing concern that the proposed definition would encourage the use of IBCs as vehicle delivery systems for bulk shipments. NATC asserts that the proposed revisions would permit IBCs to be loaded and unloaded without first being removed from the transport vehicle. NATC asks us to delay adding IBCs to the list of specifications that are not considered cargo tanks until after a safety review of IBC unloading operations permitted under exemption.

NATC is not correct. Section 177.834(h) prohibits discharge of any contents of any container, other than a cargo tank or IM portable tank, prior to the removal from the motor vehicle. The proposed definition does not change this prohibition. Thus, unless authorized under exemption, IBCs may not be loaded or unloaded without first being removed from the transport vehicle. In this final rule, we are

adopting the revised definition, as proposed.

Design Certifying Engineer and *Registered Inspector.* We proposed to change the requirements for Design Certifying Engineers (DCEs) or Registered Inspectors (RIs) to allow experienced persons to act as DCEs or RIs even if they had not registered by the grandfather clause date of December 31, 1995. DCEs and RIs must still meet the registration requirements in Subpart F of Part 107, which include familiarity with all current regulatory requirements and certification. In addition, the proposed definitions for both a DCE and an RI specify that a DCE and RI must have the knowledge and ability to determine whether a cargo tank design and construction meets the applicable specification.

The National Tank Truck Carriers (NTTC) proposed relaxing the RI requirements even further and eliminating the three-year requirement. We disagree. The functions performed by an RI are sufficiently complex that three years' work experience is necessary to assure that an RI has acquired essential knowledge and experience. In this final rule, we are adopting the definitions as proposed, with the addition of language to specify that the work experience requirements refer to cargo tank testing and inspection.

Corroded/abraded. Commenters generally support our proposal in the NPRM to clarify the term ''corroded or abraded.'' However, several commenters suggest that this definition does not provide sufficient clarification and could lead to enforcement problems. Baltimore Cargo Tank comments that enforcement personnel ''* * *will be compelled to deem any kind of surface mark on the cargo tank wall* * *'' as meeting the definition as proposed. The American Trucking Associations suggests citations may be issued as a result of paint scratches and other cosmetic blemishes.

The use of the term ''corroded or abraded'' relates primarily to a requirement to perform an inspection or test, such as those requirements in § 180.407(e) that require that, if a corroded or abraded area is observed by a visual inspection, it must be thickness tested. In this final rule, we are adopting a definition for ''corroded or abraded,'' to address commenters' concerns. Thus, in this final rule, ''corroded or abraded'' is defined to mean any visible reduction in the material thickness of the cargo tank wall or valve due to pitting, flaking, gouging, or chemical reaction to the material surface that affects the safety or serviceability of the cargo tank. The term does not include cosmetic or minor surface degradation that does not affect the safety or serviceability of the cargo tank.

Corrosive to the tank/valve. We proposed to revise the definition of ''corrosive to the tank/valve'' because of the many requests for clarification that we have received. The regulations require additional and more frequent inspections (internal inspection, thickness testing, upper coupler removal and inspection) for CTMVs transporting a lading that may adversely affect tanks or valves, causing leaks and other safety hazards. The reference to § 173.136 (definition of a Class 8 material) in the current definition has caused confusion. We did not intend that lading designated as ''corrosive to the tank/valve'' would be limited to Class 8 materials or to materials that cause corrosion at a rate of 6.25 mm or more per year. Our intent was to include any lading, not just Class 8 materials, that corrodes a tank or valve.

Only two commenters addressed this proposal, and both supported the change. Thus, RSPA will adopt the proposed change to the definition of ''corrosive to the tank/valve'' to specify that test data and experience must be used to determine if a specific lading is corrosive to the cargo tank wall or valve. The removal of the reference to § 173.136 is intended to clarify that ''corrosive to the tank/valve'' is not limited to materials with a corrosion rate of 6.25 mm or more per year. Any test data or experience that indicates any amount of corrosion is sufficient to meet the definition.

Maximum allowable working pressure (MAWP). The Truck Trailer Manufacturers Association (TTMA) submitted a petition for rulemaking (P–1272) suggesting that a cargo tank's MAWP should be dependent on the physical characteristics of the cargo tank rather than the lading carried in the cargo tank or the method of loading or unloading the cargo tank. In its petition, TTMA notes that a cargo tank manufacturer will not always know the characteristics of the lading that will be transported in the cargo tank and that a manufacturer will not always know the pressure at which the tank will be loaded or unloaded.

In its petition, TTMA also asserts that the current regulations have resulted in confusion in the regulated industry as to whether the static head of lading should be included in the MAWP. TTMA notes that § 178.345–1(k) defines MAWP as the largest of: (1) The pressure prescribed for the lading in part 173; (2) the vapor pressure of the most volatile lading at 115° F plus the maximum static pressure exerted by the lading at the maximum lading density plus any pressure exerted by a gas padding; or (3) the maximum pressure in the cargo tank during loading or unloading. TTMA states that it is not clear if the static head is included in the lading pressure prescribed in Part 173 or the loading/unloading pressure.

We agree with TTMA that there should be no ambiguity in the HMR as to the meaning of MAWP. We agree that the MAWP should be based on a cargo tank's physical characteristics, but we believe MAWP should also be linked to the requirements of § 173.33 for use by shippers and carriers. The proper matching of the maximum lading pressure conditions defined in § 173.33(c) with the MAWP of a cargo tank by shippers and carriers is critical to providing safety in cargo tank operations. The maximum lading pressure addresses many factors critical to matching a lading to a cargo tank MAWP, including the static head (pressure) generated by a specific lading or the maximum pressure in a tank during loading or unloading.

For example, § 173.33(c)(iv) requires the sum of the vapor pressure of the lading at 115° F, plus the tank static head exerted by the lading, plus any pressure exerted by a gas padding, including air, in the tank to be less than or equal to the MAWP of the cargo tank. The pressure defined by this summation is the pressure exerted at the bottom of the tank. When a cargo tank is inverted in a rollover, this pressure is applied to the pressure relief devices installed on the top of the cargo tank. Particularly for large diameter tanks and high-density ladings, this resultant pressure could be sufficient to open the cargo tank's pressure relief devices and release the contents of the tank, even if the tank were undamaged.

Thus, it is critical for shippers and carriers to determine that the MAWP of a cargo tank is greater than or equal to maximum lading pressure derived from the conditions specified in § 173.33. Similarly, cargo tank manufacturers should be familiar with the requirements of § 173.33 in order to provide a cargo tank with an MAWP sufficient to meet the needs of shippers and carriers. To strengthen the linkage between § 173.33 and cargo tank MAWP, the NPRM proposed to revise the definition for MAWP to require the MAWP to be greater than or equal to the maximum lading pressure condition prescribed in § 173.33 for each material. The proposal is adopted without change in this final rule.

Minimum thickness. We proposed to add in § 178.320 a definition for

''minimum thickness'' to clarify how the minimum head and shell thickness for specification cargo tanks must be determined. The proposal defined ''minimum thickness'' to mean the least of: (1) The thickness required by the original specification; (2) the thickness required to satisfy the structural integrity and accident damage requirements; or (3) the thickness required to satisfy the requirements of the American Society of Mechanical Engineers (ASME) Code, if applicable. This proposal was intended to eliminate confusion as to whether the minimum thickness tables in § 180.407(i) are the governing factor in determining minimum thickness.

In consultation with members of the Cargo Tank Technical Assistance Group, coordinated through FMCSA, we determined that the proposed definition did not clearly correlate the minimum thickness of the tank with the tank specification requirements. Therefore, in this final rule, we further clarified the definition to read as follows:

Minimum thickness means the minimum required shell and head (and baffle and bulkhead when used as tank reinforcement) thickness needed to meet the specification. The minimum thickness is the *greatest* of the following values:

(1)(i) For MC 330, MC 331, and MC 338 cargo tanks, the specified minimum thickness found in the applicable specification(s) for construction; or

(ii) For DOT 406, DOT 407 and DOT 412 cargo tanks, the specified minimum thickness found in Tables I and II of the applicable specification(s); or

(iii) For MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 cargo tanks, the in-service minimum thickness prescribed in Tables I and II of § 180.407(i)(5), of this subchapter, for the minimum thickness specified by Tables I and II of the applicable specification(s);

(2) The thickness necessary to meet with the structural integrity and accident damage requirements of the applicable specification(s); or

(3) The thickness as computed per the ASME Code requirements (if applicable).

In addition, adding minimum thickness determination criteria for MC 331 and 400 series cargo tanks to § 180.407(i) will increase understanding of the requirements by placing all information concerning the thickness of any cargo tank in one section. Thus, new paragraphs (i)(9) and (i)(10) will be added as follows:

(i)(9) For MC 331 cargo tanks constructed before the date of this final rule, minimum thickness shall be determined by the thickness indicated on the ASME form U1A minus any corrosion allowance. For tanks constructed after the date of this final rule, the minimum thickness will be that which is indicated on the specification plate. If no corrosion allowance is indicated on the ASME form U1A, then the thickness of the cargo tank shall be the thickness of the material of construction indicated on the form, with no corrosion allowance.

(i)(10) For 400-series cargo tanks, minimum thickness is calculated according to tables in each applicable section for that specification: § 178.346–2 for DOT 406 cargo tanks, § 178.347–2 for DOT 407 cargo tanks, and § 178.348–2 for DOT 412 cargo tanks.

Cargo tank design includes calculations using the thickness of the tank shell and heads to determine if the tank would meet the minimum structural design requirements less any corrosion allowance. These calculations include a safety factor of 4 that must be maintained throughout the life of the tank. If corrosion is discovered on the tank and the ASME form U1A of the ASME code indicates the shell is .225 inches thick with no corrosion allowance indicated on the ASME form U1A, then any areas on the tank below that thickness must be repaired prior to placing the tank back in service. Clarifying this will provide test and inspection facilities a specific number to determine the thickness of the tank and should simplify calculating corrosion allowances (if any allowance is indicated).

We had also proposed to make a separate paragraph (d) for the definition of ''minimum thickness.'' We determined that this is not necessary; in this final rule, the definition appears after the term as it is listed in the section. In addition, the wording in § 178.337–3(e) should note that the minimum metal thickness of 0.187 inches for steel and 0.270 inches for aluminum is for tanks with a design pressure of 100 psig. This section outlines regulations for minimum thickness on MC 331 cargo tanks, which are primarily used for the transportation of compressed gasses. Further, we are clarifying that the minimum thickness of the tank shell and heads must be determined using structural design requirements in Section VIII of the ASME Code, or 25% of the tensile strength of the material.

B. Marking of Emergency Shutoff Devices

In response to NTSB recommendation H–93–34, we proposed to amend the HMR in § 172.328 to require all manually activated on-truck remote shutoff devices for closure of the internal valve to be marked ''Emergency Shutoff.'' The requirement would be effective two years after the publication date of a final rule.

Several commenters suggest that we reconsider the size requirement for the marking. TTMA and NTTC recommended that the minimum lettering size should be 0.75″ instead of the proposed 1.5″ height due to the size the overall marking would assume if each letter were 1.5″ high. We agree that the 0.75″ minimum letter height is adequate to communicate the presence of the emergency shutoff. Therefore, this final rule requires the emergency shutoff device marking to be a minimum 0.75″ height.

C. Recertification to Original Specification

There appears to be confusion in the regulated industry as to whether cargo tanks that have been modified for specialized or non-hazardous materials service may be re-certified for hazardous materials service. In the NPRM, we proposed to allow for the re-certification of a cargo tank to its original specification, provided specific requirements are met. These requirements include documentation to verify that the cargo tank was originally manufactured to a DOT specification, verification by a Registered Inspector that the cargo tank is in compliance with the requirements of the specification, and certification that the cargo tank successfully passed all required tests and inspections. In addition, any repairs performed on MC 306, MC 307, or MC 312 cargo tanks after June 30, 1992, must have been performed in accordance with requirements in § 180.413.

An example is an MC 306 cargo tank that has had its internal self-closing stop valve removed so that the cargo tank can be used to transport asphalt. As proposed in the NPRM, § 180.405(b), the cargo tank may be re-certified to its original specification provided an internal shutoff valve is reinstalled, the CTMV meets all other requirements of the specification, and the cargo tank motor vehicle has successfully passed the inspections and tests required in § 180.407(c).

NATC, whose comments are supported by several other commenters, opposes allowing the recertification of cargo tanks. NATC suggests that the proposed change could result in an increase in unsafe cargo tanks and confusion on the part of enforcement personnel who would be unable to verify the cargo tank certifications. In addition, NATC expressed concern that the proposal is unfair to companies that requalified cargo tanks prior to August 31, 1995.

We do not agree that permitting cargo tanks to be re-certified to their original specifications would lead to an increase in unsafe cargo tanks. However, in this final rule we are adding additional language to clarify and ensure a DCE or

RI verifies that the cargo tank conforms to all applicable requirements of the specification in effect at the time the tank was originally constructed and the additional requirements proposed in § 180.405(b)(2).

Neither do we agree that enforcement personnel will be unable to verify the cargo tank certification. A cargo tank that is re-certified to the original specification will have records of the work performed on the tank, certifications from appropriate inspectors, and specification plates on the cargo tank that would reflect the same testing and certification data that a newly constructed cargo tank would have.

The August 31, 1995 date was placed in the regulations in § 180.405 during the rulemaking process under docket HM–183. This was the cut-off date for the manufacture of MC 307, MC 312, MC 331, and MC 338 specification cargo tanks. This date had been extended several times in the rulemaking process in response to petitions and requests by a number of cargo tank industry representatives who stated that the extra years were needed to complete the transition from the older MC specification cargo tanks to the 400 series specifications HM–183 required. None of the companies that commented on the HM–183 time line suggested that removing this date requirement presented an unfair situation. These companies were in the process of manufacturing new cargo tank motor vehicles, and through the HM–183 rulemaking process, we addressed their concerns by extending the compliance date. Removing this date extension in this rule addresses a different concern and does not create an unfair situation.

NATC recommends that RSPA include a provision in § 180.405 to allow a cargo tank to be removed from hazmat service without requiring the de-certification of the cargo tank. A specification cargo tank may be used for non-specification service and remain a specification cargo tank. The plate must be covered or removed only if tests or inspections expire. We do not see a need to further clarify the use of specification cargo tanks outside hazardous materials service.

D. Cargo Tank Qualification and Maintenance

To reduce confusion in the regulated industry, we proposed a number of clarifications to the requirements in Part 180 for cargo tank qualification and maintenance. We have reviewed the comments that we received concerning the variety of proposals under this topic below.

Test and inspection criteria. We proposed to clarify in § 180.407(b) the tests and inspections that must be performed when a cargo tank shows evidence of dents, corroded or abraded areas, or leakage; has sustained damage to an extent that may adversely affect its lading retention capability; or has any other condition that could render it unsafe for the transportation of hazardous materials. Several commenters suggested that this language was too ambiguous and could lead to excessive or unnecessary enforcement. In this final rule, we addressed many of these concerns by further modifying the definition of ''corroded or abraded'' (see discussion under ''Definitions'' above). The proposed language in § 180.407, in conjunction with our revised definition of ''corroded or abraded,'' adds more clarity than the previous language in these sections. This final rule adopts the proposed language for test and inspection criteria.

Thickness testing of ring stiffeners and appurtenances. Consistent with an NTSB recommendation (H–95–14), we proposed to revise § 180.407(d)(1) to require thickness testing of ring stiffeners and appurtenances on cargo tanks that are constructed of mild steel, high-strength, low-alloy steel, or aluminum, when the ring stiffeners and appurtenances are installed in a manner that precludes an external visual inspection. NTSB investigated two catastrophic cargo tank failures where thickness testing of the cargo tanks' ring stiffeners might have detected the corrosion that caused the failures. In this final rule, we are adopting this proposal without modification. NATC and the commenters that supported NATC's comments, asked us to clarify how an RI should determine minimum thickness of the ring stiffener since there is no ready reference. The regulatory text describes this procedure.

Testing normal vents. We proposed changes to the testing of pressure relief devices in § 180.407(g)(1)(ii) to require self-closing pressure relief valves first to open at the required set pressure and, second, to close and seat to a leak-tight condition when the pressure has dropped to 90 percent of the set-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification. Several comments asked us to better define the test requirements for a normal vent that is a self-closing pressure relief device, but is not an emergency relief device that would be tested at the above criteria. In response, we have clarified that normal vents must be tested accordance with the testing criteria established by the valve manufacturer. This assures testing accuracy because the valves will be tested to the specification to which they were built.

Repair, modification, stretching, and rebarrelling. The NPRM proposed to clarify § 180.413 requirements for repair, modification, stretching, or rebarrelling of cargo tanks. We proposed to require facilities to perform repairs, modifications, stretching, or rebarrelling of cargo tanks in conformance with the National Board Inspection Code (NBIC). The NBIC establishes procedures for repairing or modifying pressure vessels. Prior to 1995, the NBIC applied only to tanks with a maximum allowable working pressure (MAWP) of 15 psi or greater. However, in 1995 the applicability of the NBIC was extended to all pressure vessels. In this final rule, we are adopting the clarifications as proposed. Adopting the NBIC requirements for all cargo tank repairs, modifications, stretching, and rebarrelling will provide clarity, consistency, and a greater level of safety. Note, however, that we did not propose and are not adopting requirements for certification by an NBIC Authorized Inspector, completion of the R–1 form, and stamping tanks with the ''R'' stamp for non-ASME cargo tanks.

In the NPRM, we proposed to clarify that modification, stretching, or rebarrelling must be inspected and certified by a DCE. We proposed to change the requirements in § 180.413(d)(1) to require the design of the modified, stretched, or rebarrelled cargo tank motor vehicle be certified in writing by a DCE as meeting the structural integrity and accident damage protection requirements of the applicable specification. Baltimore Cargo Tank comments that the proposal may be too restrictive because it appears that a DCE would be required to sign off on small changes. However, the definition of ''modification'' includes only those changes that affect a cargo tank or cargo tank motor vehicle's structural integrity or lading retention capability. Such modifications should be approved by a DCE.

Supplemental specification plate. We proposed to revise specification plate requirements to reflect the modification, stretching, or rebarrelling of a cargo tank. We proposed to require a supplemental specification plate to be installed adjacent to the original specification plate. Changes to the original specification plate would not be allowed. The information on the original specification plate should be permanent and not altered, even if modifications are performed by the

original manufacturer. This final rule adopts the revisions as proposed.

Hose testing. We proposed, in § 180.413(c)(1), to require leak testing when any pipe, valve, hose, or fitting on a cargo tank is repaired or replaced in a process that does not involve welding. We proposed that the test must be done in accordance with § 180.407(g)(1). As noted by the National Propane Gas Association (NPGA), the proposal did not take into account existing exceptions from hose maintenance requirements for cargo tanks in dedicated compressed gas (except for carbon dioxide) service. In this final rule, we revised the proposal to include exceptions for cargo tanks in dedicated compressed gas (except for carbon dioxide) service, requiring them to be tested in accordance with the new or repaired delivery hose assemblies requirements in § 180.416(f), since any repair or replacement falling under § 180.413(c)(1) would also fall under this section.

Cleaning and purging before repairs. Because persons have suffered severe injuries or death while performing repairs to cargo tanks that were not properly cleaned and purged, we also proposed in § 180.413(a)(2) to clarify and emphasize that the entire CTMV, including void spaces, piping, and vapor recovery systems, must be cleaned and purged before doing repairs, modifications, stretchings, rebarrellings, or mountings on cargo tanks that transport toxic or flammable lading. NPGA suggests that we specify such cleaning and purging would apply only for welded repairs, not for repairs such as replacement of a valve or fitting located downstream of the primary valves or fittings. Replacing a fitting that does not require welding is not a repair as defined in § 180.403 and therefore would not, under this section, require cleaning and purging of the cargo tank. We are adopting our proposal without changes.

NTTC asks us to clarify the terms ''cleaned'' and Apurged.'' This terminology is taken from § 173.29(b)(2)(ii) which discusses conditions that may make a packaging ''empty.'' In this final rule, we added the wording from this paragraph to § 180.413(a)(2) to clarify that all hazardous material must be removed from the cargo tank before repairs are performed.

III. Revisions Applicable to DOT 400-Series Cargo Tanks

In the NPRM, we proposed several revisions to the specifications applicable to the DOT 400-series cargo tanks. These proposals included revisions to: (1) Structural integrity requirements; (2) manhole marking requirements; (3) road clearance allowances; (4) bottom accident protection; (5) specification plate marking; (6) leak testing alternatives; and (7) weld joints. In addition to these changes, which are described below, we also proposed revisions to the DOT 400-series specifications to make the requirements easier to understand and follow.

A. Structural Integrity Requirements

In the NPRM, we proposed to add structural support members to the list of attachments to which the structural integrity requirements apply for new construction of DOT–400-series CTMVs in § 178.345–3(f). In addition, the proposal included requiring mounting pads for the installation of structural members, attachments and appurtenances.

We received a number of comments on this proposal, with most commenters suggesting that the proposal would impose significant costs on the industry without significantly enhancing safety. Additionally, several commenters note that excessive welding could damage the tank wall, and that there is no indication that lightweight appurtenances account for accident situations that breach the cargo tank wall.

TTMA states that there is no data showing lightweight attachments to be a concern for shell damage, and that ''* * * a typical aluminum DOT 406 cargo tank trailer would require over 5,000 inches of additional welding * * *'' and would increase vehicle weight ''* * * by approximately 350 lbs.'' In addition, TTMA cites several safety issues that could result from excessive welding, including creating cavities that could trap hazardous ladings, creating more heat-affected zones, and possible distortion of the cargo tank wall.

We have considered the commenters concerns and are not adding structural support members to the list of attachments to which the structural integrity requirements apply. However, this final rule does include minor editorial clarifications that otherwise do not change the requirements in this section.

B. Manhole Marking

Under § 178.345–5, the HMR currently require manhole covers to be permanently marked with the manufacturer's name, the test pressure, and a certification that the manhole cover meets HMR requirements. This marking enables cargo tank owners, RIs, and enforcement personnel to verify that the manhole conforms to applicable regulatory requirements. In the NPRM, we proposed to require manhole assemblies to be marked on the outside, where the marking can be seen without opening the manhole cover or fill opening and exposing persons to hazardous materials inside the cargo tank.

Two commenters addressed the topic, the Fertilizer Institute and Farmland Industries, Inc. Both supported the proposal. This final rule adopts the proposal as presented in the NPRM. This requirement will become effective one year after the effective date of this final rule. The revised marking requirements apply to newly manufactured cargo tanks and to replacement manhole assemblies on existing cargo tanks.

C. Road Clearance

In a petition for rulemaking (P–1325), TTMA requested that we lower the minimum road clearance requirements in § 178.345–8 to permit greater flexibility in the design of landing gear, tire carriers, cabinets, and other components near axles. TTMA suggested that such a revision would permit lowering the center of gravity for some CTMVs, which would improve dynamic stability. TTMA stated that it is aware of no situations in which a landing gear failure has punctured a cargo tank.

We agreed with TTMA that reducing the center of gravity for CTMVs would be beneficial. Thus, in the NPRM, we proposed to revise the requirements for minimum road clearance for landing gear within 10 feet of an axle to be no less than 10 inches. We proposed to maintain the current clearance requirements for the middle area between axles. The proposed revision would allow landing gear to be lowered by two inches, but would not compromise clearances in the area of a CTMV most vulnerable to contact with the ground—that is, the area midway between a tractor's rear axle and the CTMV rear suspension.

In its comments on this issue, TTMA suggests that the ten-inch clearance should be measured when there is no lading in the cargo tank. We disagree, because we are identifying the minimum road clearance. This final rule adopts a ten-inch road clearance, and requires it to be calculated when the tank is fully loaded with its maximum lading.

D. MAWP Specification Plate Marking

In a petition for rulemaking (P–1212), TTMA asked us to eliminate the

maximum loading and unloading pressure marking on the specification plate. We included the proposal in the NPRM. TTMA noted that the volume change of liquids transported in DOT 406, DOT 407, and DOT 412 cargo tanks is small and that the maximum loading and unloading rate is calculated in the design of the cargo tank and identified on the specification plate. We agree that the maximum loading and unloading pressure marking is unnecessary because the maximum loading/unloading pressure is reflected in the MAWP. However, in no situation can the actual pressure in the tank exceed the MAWP. This final rule adopts the provision as proposed.

In addition, in § 180.405(k), we proposed to require owners of MC 300, MC 301, MC 302, MC 303, MC 305, MC 306 and MC 312 cargo tanks that have a pressure relief system set at 3 psig to mark or remark the cargo tank with an MAWP or design pressure of not less than 3 psig. NATC says that its field staff found approximately 11% of the MC 306 cargo tanks inspected at one location had no design pressure marked on the specification plates. This revision to the marking requirements will help reduce the number of cargo tanks without a marked design pressure.

E. Leak Testing Using EPA Method 27

In the NPRM, we proposed to clarify the parameters in § 178.346–5, 180.407(h)(2), and 180.415(b)(3) for testing and marking cargo tanks used to transport petroleum distillate fuels and equipped with vapor recovery equipment. Such cargo tanks may be tested in accordance with the Environmental Protection Agency (EPA) ''Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test'' as set forth in Appendix A to 40 CFR part 60. This annual certification test includes both the Method 27 test for vapor tightness of a cargo tank and a pressure test of the tank's internal vapor valve. The revision proposed in the NPRM specified that cargo tanks equipped with vapor collection equipment that are used to transport petroleum distillate fuels may be tested in accordance with 40 CFR 63.425(e) instead of the annual leakage test required under § 180.407 of the HMR. In addition, we proposed that, if the EPA annual certification test in 40 CFR 63.425(e) is used to satisfy the annual leak test requirement, the Method 27 test must be conducted using air. Performing the test using liquid, an alternative allowed by EPA, may mask leakage below the liquid level at the pressure level specified for the test. The EPA Method 27 air test will more accurately detect small leaks in a cargo tank. Therefore, we proposed to prohibit use of alternative procedures in section 6 of Method 27 that allow the use of water.

We proposed a special marking to designate cargo tanks that have been tested in conformance with EPA's annual certification test for cargo tanks equipped with vapor recovery equipment and used to transport petroleum distillate fuels. The proposed marking is ''K–EPA27.'' The marking would replace the ''K'' marking on a cargo tank if the EPA vapor tightness test methods and procedures as set forth in 40 CFR 63.425(e) are used in place of the leak test. If a cargo tank is tested using both the leak test specified in the HMR and the vapor tightness tests specified in the EPA regulations, it would be marked with both ''K'' and ''K–EPA27.'' This proposal would establish a national, uniform marking requirement for cargo tanks tested for vapor tightness in accordance with EPA regulations instead of, or in addition to, the leak test procedures specified in the HMR. This marking would be applied to cargo tanks that are tested for vapor tightness under EPA procedures beginning one year after the effective date of the final rule.

Several commenters addressed this proposal. Baltimore Cargo Tank asks why the test would only be permitted for petroleum products. The Method 27 test is performed at 0.6 psig for gasoline cargo tanks. The test pressure is not sufficient to detect leaks on a cargo tank used to transport other types of hazardous materials. We will consider allowing the EPA Method 27 test for other cargo tank ladings that are subject to EPA vapor recovery system requirements in a future rulemaking.

In addition, several commenters question the need for a special marking. The marking requirement will allow an inspector to know the tank was tested using the EPA Method 27 test and also standardize the marking for tanks undergoing this test throughout the United States. RSPA's marking requirement will preempt state marking requirements for cargo tanks tested with the EPA Method 27 test, eliminating possible confusion by enforcement personnel attempting to verify that a cargo tank has met the HMR leak test requirements.

A representative of Tank Truck Service suggests we omit the provision since the EPA requirements are less stringent than the DOT leakage test. The HMR already permit the test. This final rule clarifies that the test may be used only for petroleum fuel service. Further, this final rule specifies that the test may not be performed using liquid, but must be performed with air. This provision strengthens the EPA Method 27 test as an alternative to the leakage test. This final rule adopts the EPA Method 27 test provisions as proposed in the NPRM.

F. Weld Joints on DOT 407 Cargo Tanks

In a petition (P–1333), TTMA requested that we adopt a weld joint efficiency of 0.85 for head seams in bulkheads on DOT 407 cargo tanks. Based on a review of the TTMA petition and additional information, we proposed that the strength of a weld seam in a bulkhead without radiographic examination of the weld must be 0.85 of the strength of the bulkhead. The welded seam must be a full penetration butt weld, no more than one seam may be used per bulkhead, and the welded seam must be completed before forming the dish radius and knuckle radius.

In its petition, TTMA also requested that we permit spot radiographic examination of weld joints every six months as an alternative to the periodic test. We do not agree with TTMA on this issue. Instead, we proposed that two test specimens of the same material and thickness and joined by the same welding procedures as those to be used in manufacturing the bulkhead must be tested to failure in tension. The ratio of the actual tensile stress of the weld joint to the actual tensile strength of the adjacent material of both samples must be greater than 0.85. Under the proposal, the test specimens may represent all the tanks that are manufactured in the same facility within six months after the tests are completed.

In its comments to the NPRM, TTMA agrees with the provisional 85% weld joint efficiency for DOT 407 heads with butt-welded seams. However, TTMA suggests that we include the requirements of Part UW–12 of the ASME Code to the list of excepted requirements in § 178.347–1(d)(8). We agree. In this final rule, we are adding Part UW–12 of the ASME Code to the list of excepted requirements.

IV. Revisions Applicable to MC 331 and MC 338 Cargo Tanks

The NPRM proposed several revisions to the HMR specifications applicable to MC 331 and MC 338 cargo tanks. The proposals include: (1) Revisions to make the specifications consistent with the DOT 400-series cargo tank specification requirements; (2) retrofit requirements for cargo tanks not currently equipped with remote shutoff devices; (3) a new requirement for thermal activation devices on MC 338 CTMVs; (4) revisions

to the internal inspection requirements; and (5) revisions to leakage test requirements for cargo tanks in anhydrous ammonia service. In addition to these changes, which are discussed below, we are also adopting revisions to the MC 331 and MC 338 specifications to make the requirements easier to understand and follow.

A. Consistency With DOT 400-Series Specification

We proposed a number of changes to the MC 331 and MC 338 specifications to make them consistent with specifications applicable to DOT 400-series CTMVs. The DOT 400-series cargo tank specifications are more contemporary regulations that reflect current industry practices. In addition, the DOT 400-series specifications are performance standards, and, thus, provide greater flexibility to cargo tank designers and manufacturers to meet the DOT requirements. As proposed in the NPRM, we are not imposing additional requirements for MC 331 and MC 338 CTMVs; rather we are increasing flexibility in meeting the requirements by proposing performance standards and additional alternatives.

General design, construction and installation requirements. Under Docket HM–183C (60 FR 17398), we modified the structural integrity requirements for MC 331 and MC 338 CTMVs to conform with the DOT 400-series specification requirements. At that time, however, the related requirements for attachments were not changed. Thus, in the NPRM we proposed to make requirements for the design, construction, and installation of attachments, appurtenances, structural support members, or accident protection devices on MC 331 and MC 338 CTMVs consistent with the requirements for DOT 400-series CTMVs.

In Section IIA of this preamble, we discuss the proposal in the NPRM that required mounting pads for structural support members. A number of commenters opposed this addition in the structural integrity requirements for the DOT 400-series cargo tank requirements. In light of the comments received, we reconsidered this proposal and are not adopting requirements for mounting pads for structural supports. Similarly, the requirements adopted in this final rule for the MC 331 and MC 338 CTMVs will not include requirements for mounting pads for structural supports. This final rule does include minor editorial clarifications that otherwise do not change the requirements in this section.

Rear-end tank protection. The NPRM proposed to revise long-standing requirements for rear-end tank protection devices on MC 331 and MC 338 CTMVs (in §§ 178.337–10 and 178.338–10, respectively) to authorize the DOT 400-series rear-end tank protection provisions as an alternative to the current requirements for both MC 331 and MC 338 CTMVs. As several commenters note, the NPRM included regulatory language that differed from the original MC 331 and MC 338 rear-end tank protection requirements. Apart from the reorganization and editorial clarifications, the original MC 331 and MC 338 rear-end tank protection requirements have been preserved in this final rule, and we are adding a provision to allow rear-end tank protection devices to conform with § 178.345–8(d) if desired.

Support and anchoring. We also proposed changes to the MC 331 and MC 338 specifications for cargo tank support and anchoring for consistency with the DOT 400-series requirements. When the structural integrity requirements for the MC 331 and MC 338 CTMVs were modified under HM–183, the closely related requirements for support and anchoring were not changed. This was an inadvertent error that we proposed to correct. This would apply to newly constructed MC 331 and MC 338 CTMVs. We did not receive any comments on this proposal; they are adopted in this final rule as they appear in the NPRM.

Name and specification plate markings. In the NPRM, we proposed to require essential information (required in § 178.337–17 and § 178.338–18) to be marked on metal specification and name plates on MC 331 and MC 338 CTMVs, respectively, to be consistent with requirements for DOT 400-series CTMVs found in section § 178.345–14. We proposed to require that all of the information be marked on a single plate. In an effort to be more flexible and to prevent the replacement of existing name and specification plates, in this final rule we are clarifying that the marking requirements for name plates and specification plates may be on either two separate plates or on a single plate. Thus, the name and specification plate can be one single plate. We will also allow the specification plate to be attached to the cargo tank motor vehicle chassis, with additional marking requirements, to allow the specification plate to be attached without welding directly to the cargo tank wall.

In addition, based on comments submitted by the National Propane Gas Association, we are clarifying that any information marked on a plate required by the ASME code that is also required on either the name or specification plate need not be marked twice on the tank.

Further, this final rule clarifies that the cargo tank motor vehicle certification date (CTMV cert. date) is the date used to determine subsequent maintenance testing time periods. There has been confusion as to whether testing requirements start from the original test date (Orig. Test Date), the cargo tank certification date (CT cert. date) or the cargo tank motor vehicle certification date (CTMV cert. date).

For MC 331 and MC 338 cargo tanks, the name plate must display the following information:

(1) DOT-specification number MC 331 or MC 338 (DOT MC 331 or DOT MC 338).

(2) Original test date (Orig, Test Date).

(3) MAWP in psig.

(4) Cargo tank test pressure (Test P), in psig.

(5) Cargo tank design temperature (Design Temp. Range) ____%F to ____%F.

(6) Nominal capacity (Water Cap.), in pounds.

(7) Maximum design density of lading (Max. Lading density), in pounds per gallon.

(8) Material specification number—shell (Shell matl, yyy* * *), where ''yyy'' is replaced by the alloy designation and ''* * *'' is replaced by the alloy type.

(9) Material specification number—heads (Head matl. Yyy* * *), where ';yyy'' is replaced by the alloy designation and ''* * *'' by the alloy type. NOTE: When the shell and heads materials are the same thickness, they may be combined, (Shell&head matl, yyy* * *).

(10) Weld material (Weld matl.).

(11) Minimum Thickness—shell (Min. Shell-thick), in inches. When minimum shell thicknesses are not the same for different areas, show (top ____, side ____, bottom ____, in inches).

(12) Minimum thickness—heads (Min heads thick.), in inches.

(13) Manufactured thickness—shell (Mfd. Shell thick.), top ____, side ____, bottom ____, in inches. (Required when additional thickness is provided for corrosion allowance.)

(14) Manufactured thickness—heads (Mfd. Heads thick.), in inches. (Required when additional thickness is provided for corrosion allowance.)

(15) Exposed surface area, in square feet.

The specification plate on MC 331 cargo tanks must contain the following information:

(1) Cargo tank motor vehicle manufacturer (CTMV mfr.).

(2) Cargo tank motor vehicle certification date (CTMV cert. date).

(3) Cargo tank manufacturer (CT mfr.).
(4) Cargo tank date of manufacture (CT date of mfr.), month and year.
(5) Maximum weight of lading (Max. Payload), in pounds
(6) Maximum loading rate in gallons per minute (Max. Load rate, GPM), at maximum unloading pressure ____ psig.
(7) Maximum unloading rate in gallons per minute (Max. Unload rate, GPM), at maximum unloading pressure ____ psig.
(8) Lining materials (Lining), if applicable.
(9) Heating system design pressure (Heating sys, press.), in psig, if applicable.
(10) Heating system design temperature (Heating sys, temp.), in °F, if applicable.
(11) Cargo tank serial number, assigned by cargo tank manufacturer (CT serial), if applicable.

The specification plate on MC 338 cargo tanks would contain the following information:

(1) Cargo tank motor vehicle manufacturer (CTMV mfr.).
(2) Cargo tank motor vehicle certification date (CTMV cert. date).
(3) Cargo tank manufacturer (CT mfr.).
(4) Cargo tank date of manufacture (CT date of mfr.), month and year.
(5) Maximum weight of lading (Max. Payload), in pounds
(6) Maximum loading rate in gallons per minute (Max. Load rate, GPM), at maximum unloading pressure ____ psig.
(7) Maximum unloading rate in gallons per minute (Max. Unload rate, GPM), at maximum unloading pressure ____ psig.
(8) Lining materials (Lining), if applicable.
(9) ''Insulated for Oxygen Service'' or ''Not Authorized for Oxygen Service,'' as appropriate.
(10) Marked rated holding time for at least one cryogenic liquid, in hours, and the name of that cryogenic liquid (MRHT ____ hrs, name of cryogenic liquid). MRHT marking for additional cryogenic liquids may be displayed on or adjacent to the specification plate.
(11) Cargo tank serial number, assigned by the cargo tank manufacturer (CT serial), if applicable.

This requirement would apply to new construction and changes on these CTMVs.

Shortages. For MC 331 CTMVs, we proposed to require certificates for a CTMV that is manufactured in two or more stages. We proposed that each manufacturer who performs a manufacturing function on the incomplete CTMV must provide the succeeding manufacturer with a certificate that states the function that was performed and must also provide certificates received from previous manufacturers, Registered Inspectors, and Design Certifying Engineers. Further, we proposed to clarify the roles of the original manufacturer of a cargo tank and the assembler of a CTMV in documenting on the certificate those areas of the specification that are not met or specification shortages, including valves, piping, and fittings. The person who installs the components that bring the CTMV into full compliance with the specification would be required to stamp the certification date on the specification plate and issue a Certificate of Compliance. We are adopting the proposals without change in this final rule.

B. Remote Shutoffs

On December 28, 1988, in Ashland, Virginia, a pipe fitting on an MC 331 cargo tank transporting sulfur dioxide failed during a delivery operation. The driver of the CTMV suffered a fatal injury while attempting to close the cargo tank's internal valve. The CTMV was not equipped with a remote mechanical means to close the internal valve. As a result of its investigation, NTSB recommended that RSPA require MC 330, MC 331, and MC 338 CTMVs to be equipped with on-truck remote mechanical means to close the internal valve (NTSB # H–90–91).

In a final rule published November 3, 1994 (HM–183C; 50 FR 55162), we adopted a requirement for MC 331 and MC 338 CTMVs constructed after January 1, 1995, to be equipped with on-truck remote shutoff devices. For CTMVs constructed prior to January 1, 1995, we required each MC 330 and MC 331 CTMV used to transport flammable gas; flammable liquid; hydrogen chloride, refrigerated liquid; or anhydrous ammonia, and each MC 338 CTMV used to transport flammable ladings to be retrofitted with an on-truck remote shutoff device. These requirements are found in § 178.338–11. The NPRM proposed two revisions to these requirements, as discussed below.

On-truck remote mechanical shut-off. In the NPRM, we proposed to require all MC 330, MC 331, and MC 338 CTMVs to be retrofitted with an on-truck remote mechanical shutoff device that meets the requirements for the applicable specification. Under the proposal, the retrofit would be accomplished within three years from the effective date of a final rule. Under this proposal, CTMVs used to transport only argon, carbon dioxide, helium, krypton, neon, nitrogen, or xenon or mixtures thereof are excepted from the requirement for on-truck remote shutoff. The Compressed Gas Association (CGA) requested that we maintain the original grandfather clause excepting cargo tank motor vehicles certified before January 1, 1995, unless intended for use to transport flammable ladings. We agree with the NTSB recommendation setting out the safety concerns for the proposed retrofit, and therefore, adopt the proposal in this final rule.

Thermal activation self-closing stop valve. The NPRM proposed to require MC 338 CTMVs to be equipped with a means of thermal activation for closing the internal self-closing stop valve. On June 4, 1998 (63 FR 30572), RSPA established a negotiated rulemaking committee under Docket RSPA–97–2718 (HM 225A). During the negotiated rulemaking process, the committee discussed the safety benefits of fusible elements, which provide a heat-activated means for closing a valve. Fusible elements melt when subjected to sufficiently high temperatures, thereby closing the valve to which they are affixed. The HMR currently require installation of on-truck remote closures with a means of thermal activation on MC 331 cargo tanks. Consistent with the committee's recommendation, we proposed that internal self-closing stop valves be equipped with a means of thermal activation on all MC 338 cargo tanks. This requirement would not apply to tanks transporting only argon, carbon dioxide, helium, krypton, neon, nitrogen, or xenon. Commenters did not address this proposal. It is adopted without change in this final rule.

C. Inlet and Outlet Fittings on MC 331 Cargo Tanks

Currently, § 178.337–9 of the HMR requires the use of malleable metals for the construction of valves and fittings on MC 331 cargo tanks. NPGA petitioned for a change to § 178.337–9 to require liquid filling and vapor equalization fittings on MC 331 cargo tanks to be constructed of malleable steel or ductile iron only (P–0935). In its petition, NPGA stated that this change would help to prevent the occurrence of piping failures when fittings made of soft metals, such as brass or copper, are struck by an outside force. We agreed, and proposed to require new or replacement primary valves and fittings used in liquid filling or vapor equalization on MC 331 cargo tanks to be constructed of malleable steel or ductile iron. This proposal is consistent with the National Fire Protection Association (NFPA) Standard 58 and is currently the standard industry practice.

We received two comments on this proposal from NPGA. NPGA asked for an exception from this requirement for

sacrificial devices to be consistent with existing regulations applicable to sacrificial devices. We agree and made that change in this final rule.

NPGA also suggested that we add stainless steel to the materials that are authorized for new or replacement primary valves or fittings. In addition, NPGA asks that we clarify that these metals are to comprise the body of the valve and not internal components such as shutoff disks, springs, etc. We agree that stainless steel should be added and will clarify that the requirement is for the body of the valve and does not apply to internal components.

D. Internal Visual Inspections of Insulated Tanks

The HMR provide an exception for insulated MC 330 and MC 331 cargo tanks from the requirement to undergo an internal visual inspection in conjunction with the annual external visual inspection. The exception was included in the HMR to facilitate inspection of insulated MC 330 and MC 331 cargo tanks that did not have manholes or inspection openings, making it impossible to enter the cargo tank to perform an internal visual inspection. Because insulation precludes a visual inspection of the exterior of the cargo tank, and there is no means to inspect the interior of the tank we determined that the only way to verify the structural integrity of the cargo tank was to subject it to a hydrostatic or pneumatic pressure test at one-year intervals.

The exception applies to insulated MC 330 and MC 331 cargo tanks, irrespective of whether the cargo tank is equipped with a manhole or inspection opening. However, many of these cargo tanks are, in fact, equipped with manholes or inspection openings. We believe that operators should be permitted the option of verifying the structural integrity of these cargo tanks with an internal visual inspection rather than a more costly pressure test. Therefore, we proposed to permit the owner of an insulated cargo tank that is equipped with manholes or inspection openings to perform either an internal visual inspection in conjunction with the external visual inspection or a hydrostatic or pneumatic pressure-test of the cargo tank. As appropriate, these tanks would continue to be required to undergo a complete internal visual inspection and pressure test at the intervals specified in § 180.407(c).

In its comments, CGA requests that we permit MC 330 and MC 331 cargo tanks in carbon dioxide or nitrous oxide service and all MC 338 cargo tanks to be hydrostatically or pneumatically tested in place of an internal visual inspection, even if there is access to the inside of the tank. We disagree with this suggestion because an internal visual inspection provides a higher level of safety. However, we agree with CGA that in § 180.407(d)(2)(i), language should be added to clarify how the exception from an external inspection requirement should be applied. In this final rule, we are adding language to clarify that those items on the cargo tank that can be externally inspected must be inspected and noted in a written report.

E. Leakage Tests for Cargo Tanks in Anhydrous Ammonia Service

The Fertilizer Institute (TFI) filed a petition (P–1255) requesting that we allow anhydrous ammonia cargo tanks to be included in the exception for MC 330 and MC 331 cargo tanks in liquefied petroleum gas (LPG) service that permits them to be leakage tested at not less than 414 kPa (60 psig) in § 180.407(h). TFI stated that, because changes in ambient temperatures result in substantial changes in the normal operating pressure for cargo tanks in anhydrous ammonia service, a cargo tank in anhydrous ammonia service would need to be leakage tested on the hottest day of each year to ensure that it is not operated at pressures exceeding the leakage test pressure. TFI stated that this causes ''extreme hardship'' for companies transporting anhydrous ammonia in cargo tanks. TFI further stated that anhydrous ammonia is a compressed gas with properties that are similar to those of LPG.

RSPA recognized the difficulty described by TFI and, on August 23, 1996, granted an exemption, DOT E–11551, to allow cargo tanks in anhydrous ammonia service to be leakage tested at a lower pressure. However, due to differences in the vapor pressures of LPG and anhydrous ammonia, the exemption permits leakage testing of cargo tanks in dedicated anhydrous ammonia service at not less than 483 kPa (70 psig), rather than 414 kPa (60 psig) as is currently permitted for LPG.

In the NPRM we proposed to incorporate the provisions of DOT E–11551 into the HMR. Farmland Industries, Inc. and TFI, the only commenters addressing this issue, both support this proposal. It is adopted without change in this final rule.

V. Section-by-Section Review

Part 107

In this final rule, we are revising the title of Subpart F to clarify that the registration requirements apply to cargo tank facilities that test, inspect, and repair cargo tanks, and to manufacturers, assemblers, and Design Certifying Engineers.

Section 107.502

This final rule revises the definition of ''assembly'' to include the installation of linings or coatings to the inside wall of a cargo tank wall and the installation of equipment or components during the manufacturing process that are necessary to conform to the specification requirements. This definition clarifies that the term ''assembler'' is not limited to a person who mounts cargo tanks on motor vehicle suspension parts, but also includes a person who installs equipment or components during the manufacturing process.

In addition, RSPA is changing the address to which persons submit cargo tank registration statements in accordance with 49 CFR Part 107, subpart F. Persons subject to the cargo tank registration requirements in this part will now submit these statements to the Federal Motor Carrier Safety Administration's Hazardous Material Division.

Section 107.503

In this final rule, we are adopting a requirement for information on the registration statement for cargo tank manufacturing, assembling, and repair facilities to indicate whether a facility is conducting tests and inspections at a location other than the address listed in the registration form. The purpose of this provision is to identify registered facilities that are using mobile inspection/testing equipment.

Part 171

Section 171.7

This final rule incorporates by reference the June 1, 1998 edition of Truck Trailer Manufacturers Association (TTMA) RP No. 61–98 ''Performance of Manhole and/or Fill Opening Assemblies on MC 306, DOT 406, Non-ASME MC 312 and Non-ASME DOT 412 Cargo Tanks;'' the July 1, 1997 edition of TTMA RP No. 81–97 ''Performance of Spring Loaded Pressure Relief Valves on MC 306, MC 307, MC 312, DOT 406, DOT 407, and DOT 412 Tanks;'' and the June 1, 1998 edition of TTMA TB No. 107, ''Procedure for Testing In-Service Unmarked, and/or Uncertified MC 306 and Non-ASME MC 312 Type Cargo Tank Manhole Covers.'' In addition, this final rule incorporates by reference the American Petroleum Institute Recommended Practice 1604 ''Closure of Underground Petroleum

Storage Tanks,'' Third Edition, dated March 1996.

Section 171.8

This final rule revises the definition of ''Cargo tank'' to include intermediate bulk containers (IBCs) in the list of specifications that are not considered cargo tanks. In addition, we are revising the definition of ''Maximum Allowable Working Pressure'' to include a new section reference.

This final rule also revises the definitions of ''Design Certifying Engineer (DCE)'' and ''Registered Inspector (RI)'' to permit an individual who does not meet the educational requirements in the definitions to be recognized as a DCE or RI if the person was performing those functions for three years prior to September 1, 1991, and meets all other qualifications. In addition, this final rule eliminates a requirement for an individual to have registered with the DOT before December 31, 1995.

Part 172

Section 172.101

This final rule modifies the Hazardous Materials Table by adding a new Special Provision 144 in Column (7) for the following proper shipping names: Diesel fuel; Fuel, aviation, turbine engine; Fuel oil (no. 1, 2, 4, 5, or 6); Gas oil; Gasohol gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol; Gasoline; Hydrocarbons, liquid, n.o.s.; Kerosene; Petroleum crude oil; Petroleum distillates, n.o.s. or Petroleum products, n.o.s; and Petroleum oil. Special Provision 144 clarifies that underground storage tanks (USTs) may be shipped as unregulated materials if they meet the definition of ''empty'' in § 173.29 or if they are cleaned, purged, or made inert in accordance with the American Petroleum Institute Standard 1604 for USTs.

Section 172.102

We are revising paragraph (c)(1) to add Special Provision 144 concerning the transportation of empty USTs, as detailed above.

Section 172.328

In this final rule, we are adding new paragraph (d) to require all manually activated, on-vehicle remote shutoff devices for closure of a cargo tank's internal shutoff valve to be marked ''Emergency Shutoff.'' This requirement is effective two years after the effective date of this final rule. The marking must be at least 0.75″ high.

Part 173

Section 173.33

The minimum design requirements for cargo tanks used to transport Packing Group I and II liquid ladings in current paragraph (g) are re-designated as new paragraph (c)(6) and paragraph (h) is re-designated as paragraph (g). Paragraph headings are added for new paragraphs (c)(6) and new paragraph (g).

Section 173.150

We are removing the references to §§ 173.21, 173.24, 173.24a, and §§ 173.24b in paragraph (f)(3)(viii). Current paragraph (f)(3)(vii) requires compliance with Subpart B of part 173, so these references are redundant.

We are also revising paragraph (f)(3) by adding a new paragraph (ix) to clarify that hazardous materials (HM) training requirements apply to persons involved with the transportation of a combustible liquid that is either in a bulk package or is also a hazardous substance, a hazardous waste, or a marine pollutant in any packaging. In 1992, RSPA reviewed the costs and safety benefits of the training requirement (Docket HM–126F; 57 FR 20952) and found HM training to be justified. However, the training requirement was inadvertently omitted from this section.

Part 177

Section 177.817

A final rule under Docket HM–207B (67 FR 46123; 07/12/2002) revised § 177.817(a). In that final rule, we changed § 177.817(a) to read; ''A carrier may not transport a hazardous material unless it is accompanied by a shipping paper prepared in accordance with part 172 of this subchapter.'' This revision inadvertently eliminated the shipper's certification exception for carriers consolidating multiple shipments of hazardous materials. In this final rule, we are revising paragraph (a) to clarify that only the initial carrier of a hazardous materials shipment is required to have a shipping paper that includes the shipper certification.

Section 177.834

This final rule revises paragraph (j) of this section that specifies that all manhole closures must be closed and secured on cargo tanks containing hazardous materials or residues of hazardous materials to add a reference that cargo tanks that have been cleaned and purged may be transported with open manhole closures.

Part 178

Section 178.320

We are revising paragraph (a) to add definitions applicable to cargo tanks that are currently in § 178.345–1(c). In addition, we are revising and moving the definition of ''maximum allowable working pressure (MAWP)'' from § 178.345–1(k) to paragraph (a). Finally, we are replacing the term ''stop-valve'' with ''stop valve'' in paragraph (a) each place it appears.

In addition, we are revising paragraph (b) to state specifically that accident damage protection devices must be certified by a DCE. FMCSA has found that there is a misunderstanding among assemblers installing cargo tanks onto a motor vehicle chassis as to whether the rear-end tank protection devices must be certified by a DCE. Because rear-end tank protection devices are required by the specification to meet specific structural integrity requirements, the design of these devices must be certified by a DCE.

We had proposed to create a new paragraph (d) for the definition of ''minimum thickness.'' Instead of creating a separate paragraph for this term, we are including this definition in the listing of other definitions in this section.

Section 178.337–3

We are making an editorial change in paragraph (b) by breaking this paragraph into two paragraphs. In order to further clarify the minimum thickness definition and requirements, in this final rule we are altering the wording in paragraph (e) to indicate that the minimum metal thickness of 0.187 inches for steel and 0.270 inches for aluminum is for tanks with a design pressure of at least 100 psig. In addition, this final rule clarifies that, in all cases, the minimum thickness of the tank shell and head shall be determined using structural design requirements in Section VIII of the ASME Code or 25% of the tensile strength of the material used.

This final rule revises paragraph (g) as follows: (1) Groups all requirements for mounting pads in § 178.337–3(g)(2); (2) deletes an unnecessary requirement that mounting pads be the same material as the cargo tank and, instead, allows the pad material to be selected by the DCE; (3) achieves conformity with relevant requirements for DOT 400-series cargo tanks in § 178.345–3; and (4) eliminates the exception for a small gap in the continuous weld around mounting pads while permitting continued use of weep holes or telltale holes as currently allowed.

Section 178.337–8

We are revising paragraph (a)(5)(iii) to remove an expired compliance date.

Section 178.337–9

In paragraph (b)(2), we proposed a revision to require the use of malleable steel or ductile iron in the construction of inlet and outlet fittings on MC 331 cargo tanks. The proposal is adopted in this final rule and we have added stainless steel. Sacrificial devices are excepted from this requirement.

For clarity, we are moving paragraph (b)(5), which addresses requirements for grouping piping and fittings, to § 178.337–10 as new paragraph (e). This change consolidates all of the requirements for accident damage protection into one section.

Section 178.337–10

This final rule revises the section heading from ''Protection of fittings'' to ''Accident damage protection.'' In addition, we are re-designating chlorine tank requirements in current paragraph (c) as paragraph (d) and re-designating the rear-end tank protection requirements in current paragraph (d) as paragraph (c). Redesignated paragraph (c) has been revised to incorporate the requirements for MC 338 cargo tanks and authorize the DOT 400 series rear-end tank protection provisions as an alternative to existing requirements for MC 331 cargo tank motor vehicles.

In addition, this final rule re-designates § 178.337–9(b)(5) as new § 178.337–10(e) and moves requirements concerning shear sections in current '' 178.337–12 to new § 178.337–10(f).

Section 178.337–12

This section is removed and reserved. The current requirements are designated as new paragraph (f) in § 178.337–10, thereby consolidating all accident damage protection requirements in one section.

Section 178.337–13

In this final rule, we are revising this section to be more consistent with the DOT 400-series requirements for cargo tank support and anchoring. In addition, we are modifying the requirement for mounting pads to be the same material as the cargo tank material of construction by allowing the pad material to be selected by the DCE. This is achieved by referencing requirements in § 178.337–3.

Section 178.337–17

This final rule revises paragraph (a) to require essential information marked on MC 331 CTMV metal identification plates to be consistent with the requirements for DOT 400-series CTMVs. The information may be displayed on either a separate name and specification plate, or on a single plate that would serve as both the name and specification plate to allow for maximum flexibility. In addition, the specification plate may be attached to the chassis rail so that cargo tank motor vehicles assembled without welding will not require welding the specification plate onto the cargo tank. If this option is chosen, however, the cargo tank serial number, assigned by the cargo tank manufacturer, must appear on the specification plate. The same information that is required on 400 series tanks, in the same order, is required on MC 331 cargo tanks, in addition to information specific to MC 331 cargo tank motor vehicles. This requirement becomes effective one year from the date of publication of this final rule and is applicable to new construction only.

Section 178.337–18

We are re-designating paragraphs (a)(3) and (a)(4) as (a)(5) and (a)(6), respectively. We are adding new paragraphs (a)(3) and (a)(4) detailing requirements for certifying cargo tanks manufactured in stages by two or more manufacturers.

Section 178.338–2

We are revising paragraph (c) to except certain steel alloys from impact test requirements for consistency with exceptions allowed in the ASME Code. Section 178.338–1(c) states that each tank must be designed and constructed to the ASME Code. Therefore, because the HMR specify that these tanks should be constructed of materials authorized by the ASME Code, exceptions in the ASME Code from impact testing for certain steel alloys should also be recognized in the HMR.

Section 178.338–3

We are revising this section to incorporate more flexible, performance language consistent with structural integrity requirements permitted for DOT 400-series CTMVs. In addition, we are making an editorial change to paragraph (b) by breaking this paragraph into two paragraphs for clarity.

Section 178.338–10

This final rule revises the section heading to read ''Accident damage protection'' instead of ''Collision damage protection.'' In addition, we are revising paragraph (c) to authorize the DOT 400-series cargo tank rear-end protection provisions as an alternative to existing requirements for MC 338 cargo tank motor vehicles.

Section 178.338–11

In this final rule, we are revising paragraph (c) to require internal self-closing stop valves to be equipped with a means of thermal activation or other remote closure method. Additional editorial revisions are made for clarity.

Section 178.338–13

This section incorporates requirements for supports and anchoring that are consistent with requirements of the DOT 400-series cargo tanks. In addition, we are revising this section to permit material used for mounting pads to be selected by the Design Certifying Engineer. This is achieved by referencing requirements in § 178.337–3.

We are deleting current paragraph (a) and re-designating current paragraphs (b) and (c) as paragraphs (a) and (b), respectively. References to ''Appendix G'' in each of these paragraphs are revised to read: ''(* * * Appendix G of Section VIII, Division 1 of the ASME Code).''

Section 178.338–18

Paragraph (a) is revised to require essential information marked on MC 338 CTMV metal identification plates to be consistent with the requirements for DOT 400-series CTMVs so that this essential information is readily available to operators and enforcement officials. The information may be displayed on either a separate name and specification plate, or on a single plate that would serve as both the name and specification plates. In addition, the specification plate may be attached to the chassis rail so that cargo tank motor vehicles assembled without welding will not require welding the specification plate onto the cargo tank. If this option is chosen, however, the cargo tank serial number, assigned by the cargo tank manufacturer, must appear on the specification plate. The same information that is required on 400 series tanks, in the same order, will be required on MC 338 cargo tanks, plus information specific to MC 338 tanks. This requirement becomes effective one year from the date of publication of final rule and is applicable to new construction only.

Section 178.345–1

For consistency, we are revising paragraph (c) by removing the definitions and placing them in alphabetical order in § 178.320(a). In addition, we are removing paragraph (k) and moving the definition of ''maximum

allowable working pressure'' to § 178.320(a).

Section 178.345–2

We revised paragraph (b) to address the requirements for minimum thickness as specified in § 178.320(a).

Section 178.345–3

Paragraph (b) is revised by adding a new paragraph (b)(3) to require that all cargo tank designers and manufacturers must consider all conditions specified in § 173.33(c) when matching the performance characteristic of the cargo tank to the characteristics of the lading being transported.

We are revising paragraph (f) for clarity and consistency. In addition, in paragraph (f)(3), the references to paragraphs (g)(1) and (g)(2) are corrected to read (f)(1) and (f)(2).

Section 178.345–5

In this final rule, we are revising paragraph (e) to specify that manhole markings must be placed on the outside of the manhole assembly where they can be seen without opening the manhole cover or fill opening.

Section 178.345–8

This final rule revises paragraph (a)(5) to specify minimum road clearance requirements for landing gear within 10 feet of an axle. In paragraph (d), we are clarifying that manufacturers must comply with applicable requirements in the Federal Motor Carrier Safety Regulations at 49 CFR 393.86 and with paragraph (b) of this section.

Section 178.345–10

In paragraph (a), we are adding a sentence to clarify that pressure relief vents are not required to conform to the ASME Code. The requirement for a cargo tank to be ''constructed in accordance with the ASME Code'' or ''constructed and certified in conformance with the ASME Code'' applies to the construction of the cargo tank walls and closure devices. Certification to the ASME Code may be done without the installation of pressure relief devices. Sections 178.345–10, 178.346–3, 178.347–4, and 178.348–4 set forth requirements for pressure relief systems for DOT 400-series cargo tanks. These requirements are different from and supersede the ASME Code venting requirements.

Section 178.345–13

In § 178.345–13, we are correcting out-of-date section references.

Section 178.345–14

This final rule revises paragraph (b)(1) to require that the words ''See variable specification plate'' be added to the name plate on cargo tanks built to more than one specification. This requirement is consistent with industry practice.

We are also revising paragraphs (c)(6) and (c)(7) to eliminate the maximum loading and unloading pressure marking requirement from the specification plate.

Section 178.346–1

In paragraph (d)(6), the reference ''§ 178.345–10'' is corrected to read ''§ 178.346–3''; and in paragraph (d)(7) the reference ''§ 178.345–13 is corrected to read ''§ 178.346–5.''

Section 178.346–2

We are revising the text and table titles to be consistent with the minimum thickness requirements in § 178.320(a).

Section 178.346–5

This final rule revises paragraph (c) to clarify the parameters for testing cargo tanks that are used to transport petroleum distillate fuels and are equipped with vapor recovery equipment. These cargo tanks may be tested in accordance with EPA's annual certification test requirements as set forth in 40 CFR 63.425(e). To satisfy the leakage test requirements, however, the Method 27 test must be performed using air and not liquid.

Section 178.347–1

We are making a minor editorial correction in paragraph (c) to change the word ''accordance'' to ''conformance.'' We are also adding paragraph (d)(9) to provide for a weld joint efficiency of 0.85 for head seams in bulkheads on DOT 407 CTMVs.

In paragraph (d)(5) the reference to ''§§ 178.345–5 and 178.347–5,'' is revised to read ''§ 178.347–3.'' In addition, in paragraph (d)(6) the reference to ''§ 178.345–10,'' and the reference in paragraph (d)(7) to ''§ 178.345–13,'' are revised to read ''§ 178.347–4'' and ''§ 178.347–5,'' respectively.

Section 178.347–2

Paragraph (a) and the table titles are revised for consistency with the minimum thickness requirements in § 178.320(a).

Section 178.348–1

We are removing the reference to ''§ 178.348–5,'' in paragraph (e)(2)(v). We are also changing the reference to ''§ 178.348–10,'' in paragraph (e)(2)(vi), to read ''§ 178.348–4.'' In addition, the second reference to ''§ 178.348–13,'' in paragraph (e)(2)(vii), is revised to read ''§ 178.348–5.''

Section 178.348–2

Paragraph (a) and the table titles are revised for consistency with the minimum thickness requirements in § 178.320(a).

Part 180

Section 180.403

We are revising the term ''corroded or abraded'' to mean any visible reduction in the material thickness of the cargo tank wall or valve due to pitting, flaking, gouging, or chemical reaction to the material surface. In addition, we are modifying the definition of ''corrosive to the tank or valve'' to clarify its meaning that the lading has been shown through experience or test data to reduce the thickness of the tank wall or valve.

Section 180.405

We are revising paragraph (b) to allow a cargo tank motor vehicle that was originally built to a standard authorized by an exemption to be marked and certified to the applicable MC 306, MC 307, MC 312, MC 331, or MC 338 specification after August 31, 1995. Although the cargo tanks should have been marked and certified before August 31, 1995, we believe there may be a number of cargo tanks in operation that have not been certified to the appropriate specification. The practice of certifying these cargo tanks to the applicable MC 300-series specification was previously authorized. Continuing to permit these tanks to be marked and certified does not decrease the current level of safety. This change does not authorize these tanks to be used in DOT-specification service, after the expiration of the exemption under which they were manufactured, unless the necessary changes have been made and the tank is certified.

In addition, we are allowing a cargo tank manufactured to the MC 306, MC 307, or MC 312 specification, and that has not been stretched, rebarrelled, or modified, to be re-certified to its original specification. A set of criteria must be met to assure that re-certified cargo tanks conform to all applicable standards and maintain the same level of safety required of a new or continually maintained cargo tank.

Paragraph (g)(3) is removed. The period for retrofitting manholes has expired and the regulation is obsolete.

This final rule revises paragraph (k) to require MC 300-series cargo tanks that have a pressure relief system set at 3 psig and that have no MAWP or design pressure marked on the specification plate, or that have an MAWP or design pressure of less than 3 psig marked on the specification plate, to be marked or

re-marked with an MAWP or design pressure of not less than 3 psig. This provision is currently allowed, but not required.

We are revising paragraph (l)(2)(iii), which prescribes the load that a rear-end tank protection device or rear bumper is required to withstand, to be consistent with the requirements for rear-end tank protection devices in § 178.345–8(d)(3). The change requires the rear bumper or rear-end tank protection device to withstand the horizontal load at an angle not exceeding 10 degrees to the longitudinal axis of the vehicle. This change aligns the angle of load application with the rear-end damage protection devices installed on new DOT 400-series CTMVs, as revised on November 3, 1994 (Docket HM–183C; 59 FR 55167).

We are adding a new paragraph (o) to require MC 330, MC 331, and MC 338 cargo tanks that are not equipped with on-truck remote shutoff devices to be retrofitted with on-truck remote shutoff devices that meet the requirements of the applicable specification. Existing cargo tanks not equipped with an on-truck remote shutoff feature must be retrofitted. We are allowing three years for completion of this retrofit.

Section 180.407

Paragraph (a)(2) is revised to remove the phrase ''or during loading or unloading'' to limit the maximum pressure in the tank to the MAWP, except when the tank is undergoing a pressure test only.

We are revising paragraphs (b)(1) and (b)(2) to clarify the tests and inspections that must be conducted when a cargo tank shows evidence of dents, corroded or abraded areas, leakage, has sustained damage to an extent that may adversely affect its lading retention capabilities, or any other condition that might render it unsafe for transportation in hazardous materials service.

In addition, paragraph (b)(4) is removed because the inspection and testing requirements for cargo tanks that have been modified from their original design specifications are currently outlined in § 180.413 and are redundant in this section.

We are adding language to paragraph (c) to clarify that the testing interval starts from the CTMV certification date. In addition, we are adding Note 4 to the chart to allow insulated cargo tanks with manholes or inspection openings to perform either a visual internal inspection in conjunctions with the external visual inspection or a hydrostatic or pneumatic pressure-test of the cargo tank.

We are revising paragraph (d)(1) to provide the correct references for hydrostatic and pneumatic testing of cargo tanks where a visual inspection is precluded because the cargo tank is lined, coated, insulated or designed so as to prevent access for external inspection.

In response to NTSB recommendation H–95–14, we are revising paragraph (d)(4) to require thickness testing of ring stiffeners and appurtenances on cargo tanks constructed of mild steel or high-strength, low-alloy steel and aluminum that are installed in a manner that precludes an external visual inspection of the cargo tank.

We are revising paragraph (g) to replace the term ''re-closing pressure relief valve'' with ''self-closing pressure relief valve.'' This change clarifies that loading and unloading vents that open and close mechanically during loading and unloading operations are not subject to the bench testing requirements. The revision specifies that self-closing pressure relief devices, such as normal vents (1 psig vents) installed on MC 306 and DOT 406 cargo tanks and emergency relief vents, must be removed from the cargo tank for inspection and testing or replaced in conjunction with the pressure test. However, normal vents are to be tested in according to criteria established by the vent manufacturer, while we specify in this section the test for emergency relief vents. As well, we are revising paragraph (g)(1)(iv) to clarify that, during required pressure tests, a cargo tank may not be subjected to pressures that exceed those identified in the table in paragraph (g)(1)(iv). In addition, paragraph (g)(1)(v) is removed because the 5-year phase in period has expired.

We are revising paragraph (g)(4) as requested in petitions (P–1199) and (P–1262) from NTTC and TTMA, respectively. NTTC members who own and operate DOT-specification CTMVs with external heating systems have found that these systems often cannot withstand 1.5 times the design pressure as currently specified in paragraph (g)(4). The most vulnerable parts of the typical external heating system are the flexible connectors (rubber or elastomeric) that are used to interconnect heat exchanger panels. Because these heating systems are covered with insulation, a test failure can cause expensive, time-consuming repairs. Evidently, before the adoption of Part 180 periodic testing, system designers made no provision for testing at 1.5 times operational conditions, a level that is routinely recognized in the design of conventional piping systems. For these reasons, NTTC and TTMA asked RSPA to reduce the test pressure to the maximum operating pressure of each system.

We are revising paragraph (h)(1) to require internal and external self-closing stop valves to be tested during the leak test, adjacent tanks in a multi-compartment CTMV to be separately tested, and cargo tanks in liquefied compressed gas service to be externally inspected for leaks during leakage tests by a means other than using a pressure gauge.

This final rule adds paragraph (h)(1)(iv) to require MC 330 or MC 331 cargo tanks in dedicated service for anhydrous ammonia to be leakage tested at not less than 414 kPa (60 psig). In addition, we are adding paragraph (h)(1)(v) to require non-specification cargo tanks subject to testing under § 173.8(d)(6) to be leak tested at a pressure of 16.5 kPa (2.4 psig). Section 173.8 requires non-specification cargo tanks authorized by that section to be tested and inspected in the same manner as required for an MC 306 CTMV. Many non-specification cargo tanks are not marked with a MAWP or design pressure. This requirement ensures that these cargo tanks are leakage tested in the same manner as MC 306 CTMVs.

We are revising paragraph (h)(2) to clarify the parameters for testing cargo tanks used to transport petroleum distillate fuels that are equipped with vapor recovery systems. These cargo tanks may be tested in accordance with EPA's annual certification test requirements as set forth in 40 CFR 63.425(e). To satisfy the leakage test requirements, however, the Method 27 test must be performed using air. We believe that the pneumatic test is a better test method for detecting leaks in low pressure tests.

We are revising paragraph (i) and the titles of the tables in § 180.407(i)(5) by adding wording that is consistent with the proposed minimum thickness requirements in § 178.320(a).

Also, this final rule revises paragraph (i)(6) to change the wording ''maximum lading density'' to ''maximum weight of lading or reduced maximum working pressure, or combinations thereof,'' and to make other relevant editorial revisions. This change is consistent with cargo tank design practices that evaluate both the weight of lading carried by the cargo tank and the pressure on the cargo tank wall as determining factors for minimum in-service thickness.

To clarify the minimum thickness requirements, we are adding paragraphs (i)(9) and (i)(10). Paragraph (i)(9) specifies the minimum thickness for MC 331 cargo tanks and paragraph (i)(10)

references the minimum thickness tables for DOT 400 series CTMVs to clarify the correct test criteria.

Section 180.409

We are revising paragraph (a) to add a reference to the definition of ''Registered Inspector'' in § 171.8 to clarify that a person must meet the minimum qualifications set forth in the definition in order to be qualified to perform tests and inspections required by § 180.407(c).

Section 180.413

This final rule revises paragraph (a) requirements for performing repairs, modifications, stretching, rebarrelling, or remounting a cargo tank to explicitly state that a facility repairing any specification cargo tanks must adhere to the quality control procedures (*e.g.* welder qualifications and approved welding procedures) in the National Board Inspection Code (NBIC) except requirements for inspection by an Authorized Inspector, preparation of an R–1 Form, or stamping of the ''R'' stamp on the cargo tank. This was our intent in 1989 when, under Docket HM–183, we changed the regulations to require that repair facilities hold either a valid National Board Certificate of Authorization for use of the National Board ''R'' stamp or a valid ASME Certificate of Authorization for use of the ASME ''U'' stamp. FMCSA has discovered numerous instances where, although a facility holds a valid ''U'' or ''R'' stamp, the quality control procedures used to obtain the stamp were not utilized during the repair. One example is the use of ''lap patches,'' which are prohibited under the NBIC. This revision will prohibit this and other un-safe practices being discovered during repairs of non-ASME stamped cargo tanks.

The cleaning and purging requirements are moved from paragraphs (b)(4) and (d)(8) to paragraph (a)(2). The cleaning and purging requirements have been clarified to emphasize the requirements for cargo tanks to be empty and safely purged before repairs. In addition, we are revising paragraph (b) for clarity.

In paragraph (c), we require leak testing for non-welded repairs or the replacement of hoses, pipes, valves, or fittings. In response to comments from NPGA, we also include provisions for cargo tanks in liquefied compressed gas service to be tested in accordance with applicable regulations in § 180.416(f).

In paragraph (d), we are revising the requirements for stretching, modifying, or rebarrelling a cargo tank to clarify the intent of the regulation. Specifically, we are eliminating the need for testing in accordance with § 180.407, which is currently required by § 180.413(d)(4)(iv). Testing the adequacy of a modification, stretching, or rebarrelling must be accomplished by performing the tests specified in paragraph (d)(3)(iv) of this section (formerly § 180.413(d)(10)). In paragraph (d), we are clarifying that a modification, stretching, or rebarrelling must be certified by a DCE.

We are revising paragraph (d)(3)(v), to require a supplemental specification plate to be installed adjacent to the original specification plate. This change eliminates the provision that currently allows changes to the original specification plate. In addition, paragraph (d)(4), in its entirety, is re-designated as paragraph (d)(3). The provisions of paragraph (d)(5) are re-worded and moved to (d)(4).

The provisions contained in paragraphs (d)(6) and (7) to a new paragraph (e) are moved to eliminate confusion about what is required when a cargo tank is re-mounted onto a new chassis. New paragraph (e) is based on a petition (P–1322) from TTMA and clarifies requirements for certification of mounting by a DCE and supervision of the mounting by a Registered Inspector. Current paragraph (e) is re-designated as paragraph (f).

Section 180.415

We are revising paragraph (b)(3)(vi) to require a special marking, ''K–EPA27,'' on cargo tanks that have been tested in accordance with EPA requirements for testing cargo tank vapor tightness. This change provides a nationally uniform marking for cargo tanks that pass the annual certification test in accordance with EPA requirements.

Section 180.417

This final rule requires additional information to be provided on inspection and test reports to enable owners and operators of cargo tanks to more effectively review the results of the test or inspection. The information required by the revised paragraph (b)(1) provides important data about the cargo tank and its service that may affect the type and method of test to be performed. The cargo tank owner or carrier must provide this information to the re-qualification or maintenance facility. In addition, current paragraph (b)(2) is re-designated as paragraph (b)(3).

We are revising paragraph (d) to clarify what documents must accompany the cargo tank when ownership changes. This change would consolidate these requirements into one section.

VI. 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 was not reviewed by the Office of Management and Budget. We have prepared a Regulatory Evaluation assessing potential costs, benefits and savings of the revisions adopted in the final rule. The Regulatory Evaluation is available for review in the public docket on the DOT Docket Management System Web site, *http://dms.dot.gov.*

In assessing how best to update and clarify the construction and maintenance requirements for CTMVs, we considered three alternatives: (1) Taking no regulatory action; (2) clarifying and updating the regulations, responding to several petitions for rulemaking, and addressing three NTSB recommendations; and (3) responding to NTSB recommendations only. We chose Alternative 2 because it increases safety, reduces compliance costs, and provides greater flexibility in design and construction of cargo tanks.

We estimate the total annual cost savings to the industry resulting from implementation of this final rule would be $3,230,400 per year. At the same time the industry would incur increased costs of compliance totaling $3,136,770 the first year and $1,449,270 each following year. The overall net benefits are $93,630 the first year and $2,081,130 each subsequent year.

Increasing clarity and, therefore, understanding of the regulations, facilitates compliance, and reduces risks to the public and environment. While provisions of this final rule result in costs and safety benefits, others would result in savings while not sacrificing safety. Overall, the estimated savings that will result from this final rule are greater than the estimated costs. The provisions with the highest associated costs are based on safety concerns and NTSB recommendations, that are based serious accidents. The provisions in this final rule will reduce risks to people, property, and the environment.

B. 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 propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various

levels of government. 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)) that preempts state, local, and Indian tribe requirements on certain covered subjects. Covered 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 covered subject item (5) 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 DOT issues a regulation concerning any of the covered subjects, DOT 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 Federal preemption is 90 days from the date of publication of this final rule.

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, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply and a tribal summary impact statement is not required.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. Based on the assessment in the regulatory evaluation, and information generally available on the number and size of potentially affected entities, we find that:

- All small entities that engage in the manufacture, operation, testing or inspection of certain DOT specification cargo tank motor vehicles would be subject to some or all of the provisions of this final rule;
- In each instance where regulatory provisions require a new or increased cost to a regulated party, the cost is a modest $100 or less per cargo tank; and
- Small entities will be able to take advantage of the relaxations in the final rule, resulting in a net reduction of regulatory costs.

We estimate that most of the approximately 3,700 interstate and 5,500 intrastate motor carriers that would be subject to the requirements of this rule are small businesses. There are also approximately 7,000 cargo tank inspection/testing facilities subject to the requirements that are estimated to be small businesses. We estimate that operators of existing fleets of cargo tank motor vehicles would incur costs of approximately $75 per year for each of the approximately 5,000 affected series 307, 312, 407 and 412 cargo tank motor vehicles in corrosive material service, and $100 every two years for thickness testing of appurtenances on the estimated 15,000 cargo tanks in that same series. In neither case is the additional cost likely to have a significant economic impact on the operator's net income or ability to remain competitive.

Although there are other provisions in this rule that would present an added cost to these small businesses, there are also safety benefits that have the potential to save money and protect the viability of small businesses by lowering the risk of a catastrophic accident. Most of the provisions of the rule are directed toward individual cargo tanks. Since small businesses operate fewer cargo tanks, most of the cost of this final rule would affect larger businesses.

The final rule includes several provisions that will provide savings to small businesses by allowing experienced Registered Inspectors and Design Certifying Engineers to continue to perform functions for which they were previously qualified, allowing recertification of certain cargo tanks to their original specification, and relaxing requirements for leakage testing of cargo tanks in anhydrous ammonia service that are operated almost exclusively by entities that are small businesses (including small farms).

In addition, a number of other provisions of this final rule allow for a potential net reduction in regulatory costs. For example, owners of cargo tanks may re-certify their cargo tanks to the original specification. Manufacturers of MC 338 cargo tanks may take advantage of the relaxation of mounting requirements, which will save engineering and construction costs. Likewise, the revisions for bottom damage protection devices create further possible reductions in compliance costs. These and other relaxations offset the additional requirements, while maintaining current safety standards.

In consideration of the above, while the final rule applies to a substantial number of small entities, I certify that the economic impact on those small entities is not significant.

E. Paperwork Reduction Act

RSPA has a current information collection approval under OMB No. 2137–0014, Cargo Tank Specification Requirements, with 102,021 burden hours and $4,088,350 annual costs, which includes $1,595,000 in one-time start-up costs. This final rule identifies information collection that RSPA submitted to OMB for approval based on the requirements in the proposed rule. OMB approved the information collection on January 10, 2002. The approved information collection and recordkeeping burden is as follows:

OMB No.: 2137–0014.

Number of Respondents: 41,366.

Total Annual Responses: 132,600.

Total Annual Burden Hours: 102,021.

Total Annual Burden Cost: $4,088,350.

One Time Start Up Cost: $1,595,000.

Requests for a copy of the information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

F. 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 can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

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 to either state, local, or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies consider the consequences of major federal actions and that they prepare a detailed statement on actions significantly affecting the quality of the human environment. RPSA has prepared an Environmental Assessment that is available for review in the public docket on the DOT Docket Management System Web site, *http://dms.dot.gov.* Based on the assessment, RSPA has determined that this final rule does not have any significant negative impacts to the environment and may result in a small net benefit from the proposal to allow the recertification of cargo tanks that allows older cargo tanks to be used rather than discarded. Therefore, we find that there are no significant environmental impacts associated with this final rule.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, packaging and containers, Radioactive materials, reporting and recordkeeping requirements, Uranium.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, we are amending 49 CFR Chapter I as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Section 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

■ 2. The title of Subpart F is revised to read as follows:

Subpart F—Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers

* * * * *

■ 3. In § 107.502, paragraphs (a)(1) and (d) are revised to read as follows:

§ 107.502 General registration requirements.

(a) * * *

(1) *Assembly* means the performance of any of the following functions when the function does not involve welding on the cargo tank wall:

(i) The mounting of one or more tanks or cargo tanks on a motor vehicle or to a motor vehicle suspension component;

(ii) The installation of equipment or components necessary to meet the specification requirements prior to the certification of the cargo tank motor vehicle; or

(iii) The installation of linings, coatings, or other materials to the inside of a cargo tank wall.

* * * * *

(d) Registration statements must be in English, contain all of the information required by this subpart, and be submitted to: FMCSA Hazardous Materials Division—MC-ECH, Room 8310, 400 7th Street SW, Washington, DC 20590.

* * * * *

■ 4. In § 107.503, paragraphs (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) are redesignated as paragraphs (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8) respectively, and new paragraph (a)(3) is added to read as follows:

§ 107.503 Registration statement.

(a) * * *

(3) A statement indicating whether the facility uses mobile testing/inspection equipment to perform inspections, tests, or repairs at a location other than the address listed in paragraph (a)(2) of this section.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 5. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 6. In § 171.7, in paragraph (a)(3), a new entry for ''American Petroleum Institute'' is added in appropriate alphabetical order and under ''Truck Trailer Manufacturers Association,'' the entries ''TTMA TB No. 81'' and ''TTMA RP No. 61–94'' are removed, the entry ''TTMA TB No. 107'' is revised and two new entries are added in appropriate alpha-numeric order, to read as follows:

§ 171.7 Reference material.

(a) * * *

* * * * *

(3) * * *

Source and name of material	49 CFR reference
* * * * * * *	
American Petroleum Institute, 1220 L Street, NW, Washington, D.C. 20005–4070:	
API Recommended Practice 1604 Closures of Underground Petroleum Storage Tanks, 3rd Edition, March 1996	172.102

Source and name of material	49 CFR reference
* * * * * * *	
TTMA RP No. 61–98, Performance of manhole and/or Fill Opening Assemblies on MC 306, DOT 406, Non-ASME MC 312 and Non-ASME DOT 412 Cargo Tanks, June 1, 1998	180.405(g)
TTMA RP No. 81–97, Performance of Spring Loaded Pressure Relief Valves on MC 306, MC 307, MC 312, DOT 406, DOT 407, and DOT 412 Tanks, July 1, 1997 Edition	178.345–10
TTMA TB No. 107, Procedure for Testing In-Service Unmarked and/or Uncertified MC 306 and Non-ASME MC 312 Type Cargo Tank Manhole Covers, June 1, 1998. Edition	180.405(g)
* * * * * * *	

* * * * *

7. In § 171.8, the definitions for ''Cargo tank, ''Design Certifying Engineer'', and ''Registered Inspector'' are revised and the definition for ''MAWP'' is removed and a definition for ''Maximum allowable working pressure or MAWP'' is added in it's place to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Cargo tank means a bulk packaging that:

(1) Is a tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures (for the definition of a tank, *see* 49 CFR 178.320, 178.337–1, or 178.338–1, as applicable);

(2) Is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but which, by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the motor vehicle; and

(3) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank car tanks, portable tanks, or tank cars.

* * * * *

Design Certifying Engineer means a person registered with the Department in accordance with subpart F of part 107 of this chapter who has the knowledge and ability to perform stress analysis of pressure vessels and otherwise determine whether a cargo tank design and construction meets the applicable DOT specification. A *Design Certifying Engineer* meets the knowledge and ability requirements of this section by meeting any one of the following requirements:

(1) Has an engineering degree and one year of work experience in cargo tank structural or mechanical design;

(2) Is currently registered as a professional engineer by appropriate authority of a state of the United States or a province of Canada; or

(3) Has at least three years' experience in performing the duties of a Design Certifying Engineer prior to September 1, 1991.

* * * * *

Maximum allowable working pressure or *MAWP:* For DOT specification cargo tanks used to transport liquid hazardous materials, *see* § 178.320(c) of this subchapter.

* * * * *

Registered Inspector means a person registered with the Department in accordance with subpart F of part 107 of this chapter who has the knowledge and ability to determine whether a cargo tank conforms to the applicable DOT specification. A *Registered Inspector* meets the knowledge and ability requirements of this section by meeting any one of the following requirements:

(1) Has an engineering degree and one year of work experience relating to the testing and inspection of cargo tanks;

(2) Has an associate degree in engineering and two years of work experience relating to the testing and inspection of cargo tanks;

(3) Has a high school diploma (or General Equivalency Diploma) and three years of work experience relating to the testing and inspection of cargo tanks; or

(4) Has at least three years' experience performing the duties of a Registered Inspector prior to September 1, 1991.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 8. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 9. In the § 172.101 Hazardous Materials Table, the following entries are revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*	*		*	*	*	*	*	*			
D	Diesel fuel	3	NA1993	III	None	144, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A	
I	Diesel fuel	3	UN 1202	III	3	144, B1, IB3, T2, TP1	150	203	242	60 L	220 L	A	
		*	*		*	*	*	*	*	*			
	Fuel, aviation, turbine engine.	3	UN1863	I	3	144, T11, TP1, TP8 ...	150	210	243	1 L	30 L	E	
				II	3	144, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
				III	3	144, B1, IB3, T2, TP1	150	203	242	60 L	220 L	A	
D	Fuel Oil (*No. 1, 2, 4, 5, or 6*).	3	NA 1993	III	3	144, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A	
		*	*		*	*	*	*	*	*			
	Gas oil	3	UN1203	III	3	144, B1, IB3, T2, TP1	150	203	242	60 L	220 L	A	
		*	*		*	*	*	*	*	*			
D	Gasohol *gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol*.	3	NA1203	I	3	144	150	202	242	5 L	60 L	E	
	Gasoline	3	UN1203	II	3	144, B33, IB2, T4, TP1.	150	202	242	5 L	60 L	3	
		*	*		*	*	*	*	*	*			
	Hydrocarbons, liquid, n.o.s.	3	UN3295	I	3	144, T11, TP1, TP8 ...	150	201	243	1 L	30 L	E	
		3	UN3295	II	3	144, IB2, T7, TP1, TP8, TP28.	150	202	242	5 L	60 L	B	
		3	UN3295	III	3	144, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A	
		*	*		*	*	*	*	*	*			
	Kerosene	3	UN1223	III	3	144, B1, IB3, T2, TP2	150	203	242	60 L	220 L	A	
		*	*		*	*	*	*	*	*			
	Petroleum crude oil	3	UN1267	I	3	144, T11, TP1, TP8 ...	None	201	243	1 L	39 L	E	
				II	3	144, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
				III	3	144, B1, IB3, T2, TP1	150	203	242	60 L	220 L	A	
	Petroleum distillates, n.o.s *or* Petroleum products, n.o.s.	3	UN1268	I	3	144, T11, TP1, TP8 ...	150	201	243	1 L	30 L	E	
				II	3	144, IB2, T7, TP1, TP8, TP28.	150	202	242	5 L	60 L	B	
				III	3	144, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A	
		*	*		*	*	*	*	*	*			
D	Petroleum oil	3	NA1270	I	3	144, T11, TP1, TP9 ...	None	201	243	1 L	30 L	E	
				II	3	144, IB2, T7, TP1, TP8, TP28.	150	202	242	5 L	60 L	B	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				III	3	144, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A	
		*	*		*	*	*		*	*			

■ 10. In § 172.102, in paragraph (c)(1), special provision 144 is added in numerical order to read as follow:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

144 If transported as a residue in an underground storage tank (UST), as defined in 40 CFR 180.12, that has been cleaned and purged or rendered inert according to the American Petroleum Institute (API) Standard 1604 (incorporated by reference; see § 171.7 of this subchapter), then the tank and this material are not subject to any other requirements of this subchapter. However, sediments remaining in the tank that meet the definition for a hazardous material are subject to the applicable regulations of this subchapter.

* * * * *

■ 11. In § 172.328, a new paragraph (d) is added to read as follows:

§ 172.328 Cargo tanks.

* * * * *

(d) After October 3, 2005, each on-vehicle manually-activated remote shutoff device for closure of the internal self-closing stop valve must be identified by marking ''Emergency Shutoff'' in letters at least 0.75 inches in height, in a color that contrasts with its background, and located in an area immediately adjacent to the means of closure.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 12. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

■ 13. In § 173.33, paragraphs (g) and (h) are redesignated as paragraphs (c)(6) and (g), respectively, and paragraph headings for new paragraph (c)(6) and redesignated paragraph (g) are added to read as follows:

§ 173.33 Hazardous materials in cargo tank motor vehicles.

* * * * *

(c) * * *

(6) *Substitute packagings.** * *.

* * * * *

(g) *Remote control of self-closing stop valves—MC 330, MC 331 and MC 338 cargo tanks.** * *.

■ 14. In § 173.150, paragraphs (f)(3)(vii) and (f)(3)(viii) are revised and paragraph (f)(3)(ix) is added to read as follows:

§ 173.150 Exceptions for Class 3 (flammable) and combustible liquids.

* * * * *

(f) * * *

(3) * * *

(vii) Packaging requirements of subpart B of this part and, in addition, non-bulk packagings must conform to the requirements of § 173.203;

(viii) The requirements of §§ 173.1, 174.1, 177.804, 177.817, and 177.834 of this subchapter, except § 177.834(i)(3); and

(ix) The training requirements of subpart H of part 172 of this subchapter.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 15. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 16. In § 177.817, paragraph (a) is revised to read as follows:

§ 177.817 Shipping papers.

(a) *General requirements.* A person may not accept a hazardous material for transportation or transport a hazardous material by highway unless that person has received a shipping paper prepared in accordance with part 172 of this subchapter or the material is excepted from shipping paper requirements under this subchapter. A subsequent carrier may not transport a hazardous material unless it is accompanied by a shipping paper prepared in accordance with part 172 of this subchapter, except for § 172.204, which is not required.

* * * * *

■ 17. In § 177.834, paragraph (j) introductory text is revised to read as follows:

§ 177.834 General requirements.

* * * * *

(j) Except for a cargo tank conforming to § 173.29(b)(2) of this subchapter, a person may not drive a cargo tank motor vehicle containing a hazardous material regardless of quantity unless:

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 18. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 19. In § 178.320, paragraphs (a) and (b)(1) are revised to read as follows:

§ 178.320 General requirements applicable to all DOT-specification cargo tank motor vehicles.

(a) *Definitions.* For the purpose of this subchapter:

Appurtenance means any attachment to a cargo tank that has no lading retention or containment function and provides no structural support to the cargo tank.

Baffle means a non-liquid-tight transverse partition device that deflects, checks or regulates fluid motion in a tank.

Bulkhead means a liquid-tight transverse closure at the ends of or between cargo tanks.

Cargo tank means a bulk packaging that:

(1) Is a tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings and closures (for *tank, see* §§ 178.345–1(c), 178.337-1, or 178.338–1, as applicable);

(2) Is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but that, by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the motor vehicle; and

(3) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank car tanks, portable tanks, or tank cars.

Cargo tank motor vehicle means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle.

Cargo tank wall means those parts of the cargo tank that make up the primary lading retention structure, including shell, bulkheads, and fittings and, when closed, yield the minimum volume of the cargo tank assembly.

Charging line means a hose, tube, pipe, or a similar device used to pressurize a tank with material other than the lading.

Companion flange means one of two mating flanges where the flange faces are in contact or separated only by a thin leak-sealing gasket and are secured to one another by bolts or clamps.

Connecting structure means the structure joining two cargo tanks.

Constructed and certified in accordance with the ASME Code means a cargo tank is constructed and stamped in accordance with the ASME Code, and is inspected and certified by an Authorized Inspector.

Constructed in accordance with the ASME Code means a cargo tank is

constructed in accordance with the ASME Code with authorized exceptions (see §§ 178.346, 178.347, and 178.348) and is inspected and certified by a Registered Inspector.

Design type means one or more cargo tanks that are made—

(1) To the same specification;

(2) By the same manufacturer;

(3) To the same engineering drawings and calculations, except for minor variations in piping that do not affect the lading retention capability of the cargo tank;

(4) Of the same materials of construction;

(5) To the same cross-sectional dimensions;

(6) To a length varying by no more than 5 percent;

(7) With the volume varying by no more than 5 percent (due to a change in length only); and

(8) For the purposes of § 178.338 only, with the same insulation system.

External self-closing stop valve means a self-closing stop valve designed so that the self-stored energy source is located outside the cargo tank and the welded flange.

Extreme dynamic loading means the maximum loading a cargo tank motor vehicle may experience during its expected life, excluding accident loadings resulting from an accident, such as overturn or collision.

Flange means the structural ring for guiding or attachment of a pipe or fitting with another flange (companion flange), pipe, fitting or other attachment.

Inspection pressure means the pressure used to determine leak tightness of the cargo tank when testing with pneumatic pressure.

Internal self-closing stop valve means a self-closing stop valve designed so that the self-stored energy source is located inside the cargo tank or cargo tank sump, or within the welded flange, and the valve seat is located within the cargo tank or within one inch of the external face of the welded flange or sump of the cargo tank.

Lading means the hazardous material contained in a cargo tank.

Loading/unloading connection means the fitting in the loading/unloading line farthest from the loading/unloading outlet to which the loading/unloading hose, pipe, or device is attached.

Loading/unloading outlet means a cargo tank outlet used for normal loading/unloading operations.

Loading/unloading stop valve means the stop valve farthest from the cargo tank loading/unloading outlet to which the loading/unloading connection is attached.

Maximum allowable working pressure or *MAWP* means the maximum pressure allowed at the top of the tank in its normal operating position. The *MAWP* must be calculated as prescribed in Section VIII, Division 1 of the ASME Code (incorporated by reference; see § 171.7 of this subchapter). In use, the *MAWP* must be greater than or equal to the maximum lading pressure conditions prescribed in § 173.33 of this subchapter for each material transported.

Maximum lading pressure. See § 173.33(c).

Minimum thickness means the minimum required shell and head (and baffle and bulkhead when used as tank reinforcement) thickness needed to meet the specification. The minimum thickness is the *greatest* of the following values: (1)(i) For MC 330, MC 331, and MC 338 cargo tanks, the specified minimum thickness found the applicable specification(s); or

(ii) For DOT 406, DOT 407 and DOT 412 cargo tanks, the specified minimum thickness found in Tables I and II of the applicable specification(s); or

(iii) For MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 cargo tanks, the in-service minimum thickness prescribed in Tables I and II of § 180.407(i)(5) of this subchapter, for the minimum thickness specified by Tables I and II of the applicable specification(s); or

(2) The thickness necessary to meet with the structural integrity and accident damage requirements of the applicable specification(s); or

(3) The thickness as computed per the ASME Code requirements (if applicable).

Multi-specification cargo tank motor vehicle means a cargo tank motor vehicle equipped with two or more cargo tanks fabricated to more than one cargo tank specification.

Normal operating loading means the loading a cargo tank motor vehicle may be expected to experience routinely in operation.

Nozzle means a subassembly consisting of a pipe or tubular section with or without a welded or forged flange on one end.

Outlet means any opening in the shell or head of a cargo tank, (including the means for attaching a closure), except that the following are not *outlets:* a threaded opening securely closed during transportation with a threaded plug or a threaded cap, a flanged opening securely closed during transportation with a bolted or welded blank flange, a manhole, a gauging device, a thermometer well, or a pressure relief device.

Outlet stop valve means the stop valve at a cargo tank loading or unloading outlet.

Pipe coupling means a fitting with internal threads on both ends.

Rear bumper means the structure designed to prevent a vehicle or object from under-riding the rear of another motor vehicle. *See* § 393.86 of this title.

Rear-end tank protection device means the structure designed to protect a cargo tank and any lading retention piping or devices in case of a rear end collision.

Sacrificial device means an element, such as a shear section, designed to fail under a load in order to prevent damage to any lading retention part or device. The device must break under strain at no more than 70 percent of the strength of the weakest piping element between the cargo tank and the sacrificial device. Operation of the *sacrificial device* must leave the remaining piping and its attachment to the cargo tank intact and capable of retaining lading.

Self-closing stop valve means a stop valve held in the closed position by means of self-stored energy, that opens only by application of an external force and that closes when the external force is removed.

Shear section means a sacrificial device fabricated in such a manner as to abruptly reduce the wall thickness of the adjacent piping or valve material by at least 30 percent.

Shell means the circumferential portion of a cargo tank defined by the basic design radius or radii excluding the bulkheads.

Stop valve means a valve that stops the flow of lading.

Sump means a protrusion from the bottom of a cargo tank shell designed to facilitate complete loading and unloading of lading.

Tank means a container, consisting of a shell and heads, that forms a pressure tight vessel having openings designed to accept pressure tight fittings or closures, but excludes any appurtenances, reinforcements, fittings, or closures.

Test pressure means the pressure to which a tank is subjected to determine structural integrity.

Toughness of material means the capability of a material to absorb energy represented by the area under a stress strain curve (indicating the energy absorbed per unit volume of the material) up to the point of rupture.

Vacuum cargo tank means a cargo tank that is loaded by reducing the pressure in the cargo tank to below atmospheric pressure.

Variable specification cargo tank means a cargo tank that is constructed in accordance with one specification,

but that may be altered to meet another specification by changing relief device, closures, lading discharge devices, and other lading retention devices.

Void means the space between tank heads or bulkheads and a connecting structure.

Welded flange means a flange attached to the tank by a weld joining the tank shell to the cylindrical outer surface of the flange, or by a fillet weld joining the tank shell to a flange shaped to fit the shell contour.

(b) * * * (1) Each cargo tank or cargo tank motor vehicle design type and each accident damage protection device design must be certified to be in conformance with the specification requirements by a Design Certifying Engineer who is registered in accordance with subpart F of part 107 of this title.

* * * * *

■ 20. In § 178.337–3, paragraphs (b), (e) and (g) are revised to read as follows:

§ 178.337–3 Structural integrity.

* * * * *

(b) *Static design and construction.* (1) The static design and construction of each cargo tank must be in accordance with Section VIII, Division 1 of the ASME Code (incorporated by reference; *see* § 171.7 of thus subchapter). The cargo tank design must include calculation of stresses generated by design pressure, the weight of lading, the weight of structure supported by the cargo tank wall, and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be used in calculation of thermal stresses.

(2) Stress concentrations in tension, bending, and torsion that occur at pads, cradles, or supports must be considered in accordance with Appendix G of Section VIII, Division 1 of the ASME Code.

* * * * *

(e) The minimum metal thickness for the shell and heads on tanks with a design pressure of 100 psig or more must be 4.75 mm (0.187 inch) for steel and 6.86 mm (0.270 inch) for aluminum, except for chlorine and sulfur dioxide tanks. In all cases, the minimum thickness of the tank shell and head shall be determined using structural design requirements in Section VIII of the ASME Code or 25% of the tensile strength of the material used. For a cargo tank used in chlorine or sulfur dioxide service, the cargo tank must be made of steel. A corrosion allowance of 20 percent or 2.54 mm (0.10 inch), whichever is less, must be added to the thickness otherwise required for sulfur dioxide and chlorine tank material. In chlorine cargo tanks, the wall thickness must be at least 1.59 cm (0.625 inch), including corrosion allowance.

* * * * *

(g) The design, construction, and installation of an attachment, appurtenance to the cargo tank, structural support member between the cargo tank and the vehicle or suspension component, or accident protection device must conform to the following requirements:

(1) Structural members, the suspension sub-frame, accident protection structures, and external circumferential reinforcement devices must be used as sites for attachment of appurtenances and other accessories to the cargo tank, when practicable.

(2) A lightweight attachment to the cargo tank wall such as a conduit clip, brake line clip, skirting structure, lamp mounting bracket, or placard holder must be of a construction having lesser strength than the cargo tank wall materials and may not be more than 72 percent of the thickness of the material to which it is attached. The lightweight attachment may be secured directly to the cargo tank wall if the device is designed and installed in such a manner that, if damaged, it will not affect the lading retention integrity of the tank. A lightweight attachment must be secured to the cargo tank shell or head by a continuous weld or in such a manner as to preclude formation of pockets which may become sites for corrosion. Attachments meeting the requirements of this paragraph are not authorized for cargo tanks constructed under part UHT, Section VIII, Division 1 of the ASME Code.

(3) Except as prescribed in paragraphs (g)(1) and (g)(2) of this section, the welding of any appurtenance to the cargo tank wall must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the cargo tank if any force less than that prescribed in paragraph (b)(1) of this section is applied from any direction. The thickness of the mounting pad may not be less than that of the shell wall or head wall to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad with a minimum thickness of 0.25 inch may be used when the shell or head thickness is over 0.25 inch. If weep holes or tell-tale holes are used, the pad must be drilled or punched at the lowest point before it is welded to the tank. Each pad must—

(i) Be fabricated from material determined to be suitable for welding to both the cargo tank material and the material of the appurtenance or structural support member; a Design Certifying Engineer must make this determination considering chemical and physical properties of the materials and must specify filler material conforming to the requirements of the ASME Code (incorporated by reference; see § 171.7 of this subchapter).

(ii) Be preformed to an inside radius no greater than the outside radius of the cargo tank at the attachment location.

(iii) Extend at least 2 inches in each direction from any point of attachment of an appurtenance or structural support member. This dimension may be measured from the center of the attached structural member.

(iv) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head.

(v) Be attached by continuous fillet welding. Any fillet weld discontinuity may only be for the purpose of preventing an intersection between the fillet weld and a tank or jacket seam weld.

21. In § 178.337–8, paragraph (a)(5)(iii) is revised to read as follows:

§ 178.337–8 Openings, inlets, and outlets.

(a) * * *

(5) * * *

(iii) A cargo tank motor vehicle used to transport refrigerated liquids such as argon, carbon dioxide, helium, krypton, neon, nitrogen, and xenon, or mixtures thereof.

* * * * *

■ 22. In § 178.337–9, (b)(2) is revised and paragraph (b)(5) is removed and reserved, to read as follows:

§ 178.337–9 Pressure relief devices, piping, valves, hoses, and fittings.

* * * * *

(b) * * *

(2) Pipe joints must be threaded, welded, or flanged. If threaded pipe is used, the pipe and fittings must be Schedule 80 weight or heavier. Except for sacrificial devices, malleable steel, stainless steel, or ductile iron must be used in the construction of primary valves and fittings used in liquid filling or vapor equalization; however, stainless steel may not be used for internal components such as shutoff discs and springs. Where copper tubing is permitted, joints must be brazed or be of equally strong metal union type. The melting point of the brazing material may not be lower than 538 °C (1000 °F). The method of joining tubing may not reduce the strength of the tubing.

* * * * *

(5) [Reserved]

* * * * *

■ 23. In § 178.337–10, the section heading and paragraphs (c) and (d) are revised, and paragraphs (e) and (f) are added, to read as follows:

§ 178.337–10 Accident damage protection.

* * * * *

(c) *Rear-end tank protection.* Rear-end tank protection devices must:

(1) Consist of at least one rear bumper designed to protect the cargo tank and piping in the event of a rear end collision. The bumper design must transmit the force of the collision directly to the chassis of the vehicle. The rear bumper and its attachments to the chassis must be designed to withstand a load equal to twice the weight of the loaded cargo tank and attachments, using a safety factor of four based on the tensile strength of the materials used, with such load being applied horizontally and parallel to the major axis of the cargo tank. The rear bumper dimensions must meet the requirements of § 393.86 of this title and extend vertically to a height adequate to protect all valves and fittings located at the rear of the cargo tank from damage that could result in loss of lading; or

(2) Conform to the requirements of § 178.345–8.

(d) *Chlorine tanks.* A chlorine tank must be equipped with a protective housing and a manway cover to permit the use of standard emergency kits for controlling leaks in fittings on the dome cover plate. The housing and manway cover must conform to the Chlorine Institute's standards as follows:

(1) Tanks manufactured on or before December 31, 1974: Dwg. 137–1, dated November 7, 1962, or Dwg. 137–2, dated September 1, 1971.

(2) Tanks manufactured on or after January 1, 1975: Dwg. 137–2, dated September 1, 1971.

(e) *Piping and fittings.* Piping and fittings must be grouped in the smallest practicable space and protected from damage as required in this section.

(f) *Shear section.* Shear sections or sacrificial devices are required on the following attachments:

(1) A section that will break under undue strain must be provided adjacent to or outboard of each valve specified in § 178.337–8(a)(3) and (4).

(2) Internal self-closing stop valves, excess flow valves and check valves must be protected by a shear section or other sacrificial device. The sacrificial device must be located in the piping system outboard of the stop valve and within the accident damage protection to prevent any accidental loss of lading. The device must break at no more than 70 percent of the load that would be required to cause the failure of the protected lading retention device, part or cargo tank wall. The failure of the sacrificial device must leave the protected lading retention device and its attachment to the cargo tank wall intact and capable of retaining product.

§ 178.337–12 [Removed and reserved]

■ 24. Section 178.337–12 is removed and reserved.

■ 25. Section 178.337–13 is revised to read as follows:

§ 178.337–13 Supporting and anchoring.

(a) A cargo tank that is not permanently attached to or integral with a vehicle chassis must be secured by the use of restraining devices designed to prevent relative motion between the cargo tank and the vehicle chassis when the vehicle is in operation. Such restraining devices must be readily accessible for inspection and maintenance.

(b) On a cargo tank motor vehicle designed and constructed so that the cargo tank constitutes in whole or in part the structural member used in place of a motor vehicle frame, the cargo tank must be supported by external cradles. A cargo tank mounted on a motor vehicle frame must be supported by external cradles or longitudinal members. Where used, the cradles must subtend at least 120 degrees of the shell circumference.

(c) The design calculations of the support elements must satisfy the requirements of § 178.337–3, (a), (b), (c), and (d).

(d) Where any cargo tank support is attached to any part of a cargo tank head, the stresses imposed upon the head must be provided for as required in paragraph (c) of this section.

■ 26. Section 178.337–17, is revised to read as follows:

§ 178.337–17 Marking.

(a) *General.* Each cargo tank certified after October 1, 2004 must have a corrosion-resistant metal name plate (ASME Plate) and specification plate permanently attached to the cargo tank by brazing, welding, or other suitable means on the left side near the front, in a place accessible for inspection. If the specification plate is attached directly to the cargo tank wall by welding, it must be welded to the tank before the cargo tank is postweld heat treated.

(1) The plates must be legibly marked by stamping, embossing, or other means of forming letters into the metal of the plate, with the information required in paragraphs (b) and (c) of this section, in addition to that required by the ASME Code, in characters at least 3/16 inch high (parenthetical abbreviations may be used). All plates must be maintained in a legible condition.

(2) Each insulated cargo tank must have additional plates, as described, attached to the jacket in the location specified unless the specification plate is attached to the chassis and has the information required in paragraphs (b) and (c) of this section.

(3) The information required for both the name and specification plate may be displayed on a single plate. If the information required by this section is displayed on a plate required by the ASME, the information need not be repeated on the name and specification plates.

(4) The specification plate may be attached to the cargo tank motor vehicle chassis rail by brazing, welding, or other suitable means on the left side near the front head, in a place accessible for inspection. If the specification plate is attached to the chassis rail, then the cargo tank serial number assigned by the cargo tank manufacturer must be included on the plate.

(b) *Name plate.* The following information must be marked on the name plate in accordance with this section:

(1) DOT-specification number MC 331 (DOT MC 331).

(2) Original test date (Orig, Test Date).

(3) MAWP in psig.

(4) Cargo tank test pressure (Test P), in psig.

(5) Cargo tank design temperature (Design Temp. Range) ____ °F to ____ °F.

(6) Nominal capacity (Water Cap.), in pounds.

(7) Maximum design density of lading (Max. Lading density), in pounds per gallon.

(8) Material specification number-shell (Shell matl, yyy * * *), where ''yyy'' is replaced by the alloy designation and ''* * *'' is replaced by the alloy type.

(9) Material specification number-heads (Head matl. Yyy * * *), where ''yyy'' is replaced by the alloy designation and ''* * *'' by the alloy type.

Note: When the shell and heads materials are the same thickness, they may be combined, (Shell & head matl, yyy * * *).

(10) Weld material (Weld matl.).

(11) Minimum Thickness-shell (Min. Shell-thick), in inches. When minimum shell thicknesses are not the same for different areas, show (top ____, side ____, bottom ____, in inches).

(12) Minimum thickness-heads (Min heads thick.), in inches.

(13) Manufactured thickness-shell (Mfd. Shell thick.), top ____, side ____, bottom ____, in inches. (Required when additional thickness is provided for corrosion allowance.)

(14) Manufactured thicknessBheads (Mfd. Heads thick.), in inches. (Required when additional thickness is provided for corrosion allowance.)

(15) Exposed surface area, in square feet.

(c) *Specification plate.* The following information must be marked on the specification plate in accordance with this section:

(1) Cargo tank motor vehicle manufacturer (CTMV mfr.).

(2) Cargo tank motor vehicle certification date (CTMV cert. date).

(3) Cargo tank manufacturer (CT mfr.).

(4) Cargo tank date of manufacture (CT date of mfr.), month and year.

(5) Maximum weight of lading (Max. Payload), in pounds

(6) Maximum loading rate in gallons per minute (Max. Load rate, GPM).

(7) Maximum unloading rate in gallons per minute (Max Unload rate, GPM).

(8) Lining materials (Lining), if applicable.

(9) Heating system design pressure (Heating sys, press.), in psig, if applicable.

(10) Heating system design temperature (Heating sys, temp.), in °F, if applicable.

(11) Cargo tank serial number, assigned by cargo tank manufacturer (CT serial), if applicable.

Note 1 to paragraph (c): See '' 173.315(a) of this chapter regarding water capacity.

Note 2 to paragraph (c): When the shell and head materials are the same thickness, they may be combined (Shell & head matl, yyy * * *).

(d) The design weight of lading used in determining the loading in §§ 178.337(3)(b), 178.337–10(b) and (c), and 178.337–13(a) and (b) must be shown as the maximum weight of lading marking required by paragraph (c) of this section.

■ 27. In § 178.337–18, paragraphs (a)(3) and (a)(4) are redesignated as paragraphs (a)(5) and (a)(6) respectively, and new paragraphs (a)(3) and (a)(4) are added to read as follows:

§ 178.337–18 Certification.

(a) * * *

(3) When a cargo tank motor vehicle is manufactured in two or more stages, each manufacturer who performs a manufacturing function or portion thereof on the incomplete cargo tank motor vehicle must provide to the succeeding manufacturer, at or before the time of delivery, a certificate that states the function performed by the manufacturer, including any certificates received from previous manufacturers, Registered Inspectors, and Design Certifying Engineers.

(4) *Specification shortages.* When a cargo tank motor vehicle is manufactured in two or more stages, the manufacturer of the cargo tank must attach the name plate and specification plate as required by § 178.337–17(a) and (b) without the original date of certification stamped on the specification plate. Prior manufacturers must list the specification requirements that are not completed on the Certificate of Compliance. When the cargo tank motor vehicle is brought into full compliance with the applicable specification, the cargo tank motor vehicle manufacturer must have a Registered Inspector stamp the date of certification on the specification plate and issue a Certificate of Compliance to the owner of the cargo tank motor vehicle. The Certificate of Compliance must list the actions taken to bring the cargo tank motor vehicle into full compliance. In addition, the certificate must include the date of certification and the person (manufacturer, carrier or repair organization) accomplishing compliance.

* * * * *

■ 28. In § 178.338–2, paragraph (c) is revised to read as follows:

§ 178.338–2 Material.

* * * * *

(c) Impact tests are required on all tank materials, except materials that are excepted from impact testing by the ASME Code, and must be performed using the procedure prescribed in the ASME Code (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

■ 29. In § 178.338–3, paragraphs (b) and (g) are revised to read as follows:

§ 178.338–3 Structural integrity.

* * * * *

(b) *Static design and construction.* (1) The static design and construction of each tank must be in accordance with Appendix G of Section VII, Division 1 of the ASME Code (incorporated by reference; see § 171.7 of this subchapter). The tank design must include calculation of stress due to the design pressure, the weight of lading, the weight of structures supported by the tank wall, and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be used in calculation of the thermal stresses.

(2) Stress concentrations in tension, bending, and torsion which occur at pads, cradles, or other supports must be considered in accordance with Appendix G of Section VII, Division 1 of the ASME Code.

* * * * *

(g) The design, construction and installation of an attachment, appurtenance to the cargo tank or structural support member between the cargo tank and the vehicle or suspension component or accident protection device must conform to the following requirements:

(1) Structural members, the suspension subframe, accident protection structures and external circumferential reinforcement devices must be used as sites for attachment of appurtenances and other accessories to the cargo tank, when practicable.

(2) A lightweight attachment to the cargo tank wall such as a conduit clip, brakeline clip, skirting structure, lamp mounting bracket, or placard holder must be of a construction having lesser strength than the cargo tank wall materials and may not be more than 72 percent of the thickness of the material to which it is attached. The lightweight attachment may be secured directly to the cargo tank wall if the device is designed and installed in such a manner that, if damaged, it will not affect the lading retention integrity of the tank. A lightweight attachment must be secured to the cargo tank shell or head by a continuous weld or in such a manner as to preclude formation of pockets that may become sites for corrosion. Attachments meeting the requirements of this paragraph are not authorized for cargo tanks constructed under part UHT, Section VIII, Division 1 of the ASME Code.

(3) Except as prescribed in paragraphs (g)(1) and (g)(2) of this section, the welding of any appurtenance the cargo tank wall must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the cargo tank if any force less than that prescribed in paragraph (b)(1) of this section is applied from any direction. The thickness of the mounting pad may not be less than that of the shell or head to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad with a minimum thickness of 0.187 inch may be used when the shell or head thickness is over 0.187 inch. If weep holes or tell-tale holes are used, the pad must be drilled

or punched at the lowest point before it is welded to the tank. Each pad must:

(i) Be fabricated from material determined to be suitable for welding to both the cargo tank material and the material of the appurtenance or structural support member; a Design Certifying Engineer must make this determination considering chemical and physical properties of the materials and must specify filler material conforming to the requirements of the ASME Code (incorporated by reference; see § 171.7 of this subchapter).

(ii) Be preformed to an inside radius no greater than the outside radius of the cargo tank at the attachment location.

(iii) Extend at least 2 inches in each direction from any point of attachment of an appurtenance or structural support member. This dimension may be measured from the center of the attached structural member.

(iv) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head.

(v) Be attached by continuous fillet welding. Any fillet weld discontinuity may only be for the purpose of preventing an intersection between the fillet weld and a tank or jacket seam weld.

■ 30. In § 178.338–10, the section heading and paragraph (c) are revised to read as follows:

§ 178.338–10 Accident damage protection.

* * * * *

(c) *Rear-end tank protection.* Rear-end tank protections devices must:

(1) Consist of at least one rear bumper designed to protect the cargo tank and piping in the event of a rear-end collision. The rear-end tank protection device design must transmit the force of the collision directly to the chassis of the vehicle. The rear-end tank protection device and its attachments to the chassis must be designed to withstand a load equal to twice the weight of the loaded cargo tank and attachments, using a safety factor of four based on the tensile strength of the materials used, with such load being applied horizontally and parallel to the major axis of the cargo tank. The rear-end tank protection device dimensions must meet the requirements of § 393.86 of this title and extend vertically to a height adequate to protect all valves and fittings located at the rear of the cargo tank from damage that could result in loss of lading; or

(2) Conform to the requirements of § 178.345–8.

* * * * *

■ 31. In § 178.338–11, paragraph (c) is revised as follows:

§ 178.338–11 Discharge control devices.

* * * * *

(c) Except for a cargo tank that is used to transport argon, carbon dioxide, helium, krypton, neon, nitrogen, xenon, or mixtures thereof, each liquid filling and liquid discharge line must be provided with an on-vehicle remotely controlled self-closing shutoff valve.

(1) If pressure from a reservoir or from an engine-driven pump or compressor is used to open this valve, the control must be of fail-safe design and spring-biased to stop the admission of such pressure into the cargo tank. If the jacket is not evacuated, the seat of the valve must be inside the tank, in the opening nozzle or flange, or in a companion flange bolted to the nozzle. If the jacket is evacuated, the remotely controlled valve must be located as close to the tank as practicable.

(2) Each remotely controlled shut off valve must be provided with on-vehicle remote means of automatic closure, both mechanical and thermal. One means may be used to close more than one remotely controlled valve. Cable linkage between closures and remote operators must be corrosion resistant and effective in all types of environment and weather. The thermal means must consist of fusible elements actuated at a temperature not exceeding 121 °C (250 °F), or equivalent devices. The loading/unloading connection area is where hoses are connected to the permanent metal piping. The number and location of remote operators and thermal devices shall be as follows:

(i) On a cargo tank motor vehicle over 3,500 gallons water capacity, remote means of automatic closure must be installed at the ends of the cargo tank in at least two diagonally opposite locations. If the loading/unloading connection at the cargo tank is not in the general vicinity of one of these locations, at least one additional thermal device must be installed so that heat from a fire in the loading/unloading connection area will activate the emergency control system.

(ii) On a cargo tank motor vehicle of 3,500 gallons water capacity or less, at least one remote means of automatic closure must be installed on the end of the cargo tank farthest away from the loading/unloading connection area. At least one thermal device must be installed so that heat from a fire in the loading/unloading connection area will activate the emergency control system.

■ 32. Section 178.338–13 is revised to read as follows:

§ 178.338–13 Supporting and anchoring.

(a) On a cargo tank motor vehicle designed and constructed so that the cargo tank constitutes in whole or in part the structural member used in place of a motor vehicle frame, the cargo tank or the jacket must be supported by external cradles or by load rings. For a cargo tank mounted on a motor vehicle frame, the tank or jacket must be supported by external cradles, load rings, or longitudinal members. If cradles are used, they must subtend at least 120 degrees of the cargo tank circumference. The design calculations for the supports and load-bearing tank or jacket, and the support attachments must include beam stress, shear stress, torsion stress, bending moment, and acceleration stress for the loaded vehicle as a unit, using a safety factor of four, based on the tensile strength of the material, and static loading that uses the weight of the cargo tank and its attachments when filled to the design weight of the lading (see Appendix G of Section VIII, Division 1 of the ASME Code), multiplied by the following factors. The effects of fatigue must also be considered in the calculations. Minimum static loadings must be as follows:

(1) For a vacuum-insulated cargo tank—

(i) Vertically downward of 2;

(ii) Vertically upward of 2;

(iii) Longitudinally of 2; and

(iv) Laterally of 2.

(2) For any other insulated cargo tank—

(i) Vertically downward of 3;

(ii) Vertically upward of 2;

(iii) Longitudinally of 2; and

(iv) Laterally of 2.

(b) When a loaded tank is supported within the vacuum jacket by structural members, the design calculations for the tank and its structural members must be based on a safety factor of four and the tensile strength of the material at ambient temperature. The enhanced tensile strength of the material at actual operating temperature may be substituted for the tensile strength at ambient temperature to the extent recognized in the ASME Code for static loadings. Static loadings must take into consideration the weight of the tank and the structural members when the tank is filled to the design weight of lading (see Appendix G of Section VIII, Division 1 of the ASME Code), multiplied by the following factors. When load rings in the jacket are used for supporting the tank, they must be designed to carry the fully loaded tank at the specified static loadings, and external pressure. Minimum static loadings must be as follows:

(1) Vertically downward of 2;

(2) Vertically upward of 1½;

(3) Longitudinally of 1½; and, (4) Laterally of 1½.

■ 33. Section 178.338–18, is revised to read as follows:

§ 178.338–18 Marking.

(a) *General.* Each cargo tank certified after October 1, 2004 must have a corrosion-resistant metal name plate (ASME Plate) and specification plate permanently attached to the cargo tank by brazing, welding, or other suitable means on the left side near the front, in a place accessible for inspection. If the specification plate is attached directly to the cargo tank wall by welding, it must be welded to the tank before the cargo tank is postweld heat treated.

(1) The plates must be legibly marked by stamping, embossing, or other means of forming letters into the metal of the plate, with the information required in paragraphs (b) and (c) of this section, in addition to that required by the ASME Code (incorporated by reference; see § 171.7 of this subchapter), in characters at least 3/16 inch high (parenthetical abbreviations may be used). All plates must be maintained in a legible condition.

(2) Each insulated cargo tank must have additional plates, as described, attached to the jacket in the location specified unless the specification plate is attached to the chassis and has the information required in paragraphs (b) and (c) of this section.

(3) The information required for both the name and specification plate may be displayed on a single plate. If the information required by this section is displayed on a plate required by the ASME Code, the information need not be repeated on the name and specification plates.

(4) The specification plate may be attached to the cargo tank motor vehicle chassis rail by brazing, welding, or other suitable means on the left side near the front head, in a place accessible for inspection. If the specification plate is attached to the chassis rail, then the cargo tank serial number assigned by the cargo tank manufacturer must be included on the plate.

(b) *Name plate.* The following information must be marked on the name plate in accordance with this section:

(1) DOT-specification number MC 338 (DOT MC 338).

(2) Original test date (Orig, Test Date).

(3) MAWP in psig.

(4) Cargo tank test pressure (Test P), in psig.

(5) Cargo tank design temperature (Design Temp. Range) ____ °F to ____ °F.

(6) Nominal capacity (Water Cap.), in pounds.

(7) Maximum design density of lading (Max. Lading density), in pounds per gallon.

(8) Material specification number—shell (Shell matl, yyy * * *), where ''yyy'' is replaced by the alloy designation and ''* * *'' is replaced by the alloy type.

(9) Material specification number—heads (Head matl. yyy * * *), where ''yyy'' is replaced by the alloy designation and ''* * *'' by the alloy type.

Note: When the shell and heads materials are the same thickness, they may be combined, (Shell & head matl, yyy * * *).

(10) Weld material (Weld matl.).

(11) Minimum Thickness-shell (Min. Shell-thick), in inches. When minimum shell thicknesses are not the same for different areas, show (top ____, side ____, bottom ____, in inches).

(12) Minimum thickness-heads (Min heads thick.), in inches.

(13) Manufactured thickness-shell (Mfd. Shell thick.), top ____, side ____, bottom ____, in inches. (Required when additional thickness is provided for corrosion allowance.)

(14) Manufactured thickness-heads (Mfd. Heads thick.), in inches. (Required when additional thickness is provided for corrosion allowance.)

(15) Exposed surface area, in square feet.

(c) *Specification plate.* The following information must be marked on the specification plate in accordance with this section:

(1) Cargo tank motor vehicle manufacturer (CTMV mfr.).

(2) Cargo tank motor vehicle certification date (CTMV cert. date).

(3) Cargo tank manufacturer (CT mfr.).

(4) Cargo tank date of manufacture (CT date of mfr.), month and year.

(5) Maximum weight of lading (Max. Payload), in pounds.

(6) Maximum loading rate in gallons per minute (Max. Load rate, GPM).

(7) Maximum unloading rate in gallons per minute (Max Unload rate).

(8) Lining materials (Lining), if applicable.

(9) ''Insulated for oxygen service'' or ''Not insulated for oxygen service'' as appropriate.

(10) Marked rated holding time for at least one cryogenic liquid, in hours, and the name of that cryogenic liquid (MRHT ____ hrs, name of cryogenic liquid). Marked rated holding marking for additional cryogenic liquids may be displayed on or adjacent to the specification plate.

(11) Cargo tank serial number (CT serial), as assigned by cargo tank manufacturer, if applicable.

Note 1 to paragraph (c): See § 173.315(a) of this chapter regarding water capacity.

Note 2 to paragraph (c): When the shell and head materials are the same thickness, they may be combined (Shell & head matl, yyy***).

(d) The design weight of lading used in determining the loading in §§ 178.338–3(b), 178.338–10(b) and (c), and 178.338–13(b) and (c) must be shown as the maximum weight of lading marking required by paragraph (c) of this section.

* * * * *

■ 34. In § 178.345–1, paragraph (c) is revised and paragraph (k) is removed, to read as follows:

§ 178.345–1 General requirements.

* * * * *

(c) *Definitions.* See § 178.320(a) for the definition of certain terms used in §§ 178.345, 178.346, 178.347 and 178.348.

* * * * *

■ 35. In § 178.345–2, paragraph (b) is revised to read as follows:

§ 178.345–2 Material and material thickness.

* * * * *

(b) *Minimum thickness.* The minimum thickness for the shell and heads (or baffles and bulkheads when used as tank reinforcement) must be no less than that determined under criteria for minimum thickness specified in § 178.320(a).

* * * * *

■ 36. In § 178.345–3, paragraph (b)(3) is added and paragraph (f) is revised to read as follows:

§ 178.345–3 Structural integrity.

* * * * *

(b) * * *

(3) Cargo tank designers and manufacturers must consider all of the conditions specified in § 173.33(c) of this subchapter when matching a cargo tank's performance characteristic to the characteristic of each lading transported.

* * * * *

(f) The design, construction, and installation of an attachment, appurtenance to a cargo tank, structural support member between the cargo tank and the vehicle or suspension component must conform to the following requirements:

(1) Structural members, the suspension sub-frame, accident protection structures and external circumferential reinforcement devices must be used as sites for attachment of appurtenances and other accessories to the cargo tank, when practicable.

(2) A lightweight attachment to a cargo tank wall such as a conduit clip, brake line clip, skirting structure, lamp mounting bracket, or placard holder must be of a construction having lesser strength than the cargo tank wall materials and may not be more than 72 percent of the thickness of the material to which it is attached. The lightweight attachment may be secured directly to the cargo tank wall if the device is designed and installed in such a manner that, if damaged, it will not affect the lading retention integrity of the tank. A lightweight attachment must be secured to the cargo tank shell or head by continuous weld or in such a manner as to preclude formation of pockets which may become sites for corrosion.

(3) Except as prescribed in paragraphs (f)(1) and (f)(2) of this section, the welding of any appurtenance to the cargo tank wall must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the cargo tank if any force less than that prescribed in paragraph (b)(1) of this section is applied from any direction. The thickness of the mounting pad may not be less than that of the shell or head to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad with a minimum thickness of 0.187 inch may be used when the shell or head thickness is over 0.187 inch. If weep holes or tell-tale holes are used, the pad must be drilled or punched at the lowest point before it is welded to the tank. Each pad must:

(i) Be fabricated from material determined to be suitable for welding to both the cargo tank material and the material of the appurtenance or structural support member; a Design Certifying Engineer must make this determination considering chemical and physical properties of the materials and must specify filler material conforming to the requirements of the ASME Code (incorporated by reference; see § 171.7 of this subchapter).

(ii) Be preformed to an inside radius no greater than the outside radius of the cargo tank at the attachment location.

(iii) Extend at least 2 inches in each direction from any point of attachment of an appurtenance or structural support member. This dimension may be measured from the center of the structural member attached.

(iv) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head.

(v) Be attached by continuous fillet welding. Any fillet weld discontinuity may only be for the purpose of preventing an intersection between the fillet weld and the tank or jacket seam weld.

■ 37. In § 178.345–5, paragraph (e) introductory text is revised to read as follows:

§ 178.345–5 Manhole assemblies.

* * * * *

(e) On cargo tank motor vehicles manufactured after October 1, 2004, each manhole assembly must be permanently marked on the outside by stamping or other means in a location visible without opening the manhole assembly or fill opening, with:

* * * * *

■ 38. In ✕§ 178.345–8, paragraphs (a)(5), and (d) introductory text are revised to read as follows:

§§ 178.345–8 Accident damage protection.

(a) * * *

(5) *Minimum road clearance.* The minimum road clearance of any cargo tank motor vehicle component or protection device located between any two adjacent axles on a vehicle or vehicle combination must be at least one-half inch for each foot separating the component or device from the nearest axle of the adjacent pair, but in no case less than twelve (12) inches, except that the minimum road clearance for landing gear or other attachments within ten (10) feet of an axle must be no less than ten (10) inches. These measurements must be calculated at the gross vehicle weight rating of the cargo tank motor vehicle.

* * * * *

(d) *Rear-end tank protection.* Each cargo tank motor vehicle must be provided with a rear-end tank protection device to protect the cargo tank and piping in the event of a rear-end collision and reduce the likelihood of damage that could result in the loss of lading. Nothing in this paragraph relieves the manufacturer of responsibility for complying with the requirements of § 393.86 of this title and, if applicable, paragraph (b) of this section. The rear-end tank protection device must conform to the following requirements:

* * * * *

■ 39. In § 178.345–10, paragraph (a) and the last sentence in paragraph (b)(3)(i) are revised to read as follows:

§ 178.345–10 Pressure relief.

(a) Each cargo tank must be equipped to relieve pressure and vacuum conditions in conformance with this section and the applicable individual specification. The pressure and vacuum relief system must be designed to operate and have sufficient capacity to prevent cargo tank rupture or collapse due to over-pressurization or vacuum resulting from loading, unloading, or from heating and cooling of lading. Pressure relief systems are not required to conform to the ASME Code.

(b) * * *

(3) * * *

(i) * * *. An acceptable method is outlined in TTMA RP No. 81–97 ''Performance of Spring Loaded Pressure Relief Valves on MC 306, MC 307, MC 312, DOT 406, DOT 407, and DOT 412 Tanks'' (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

■ 40. In § 178.345–13, paragraph (a) is revised to read as follows:

§ 178.345–13 Pressure and leakage tests.

(a) Each cargo tank must be pressure and leakage tested in accordance with this section and §§ 178.346–5, 178.347–5, or 178.348–5.

* * * * *

■ 41. In § 178.345–14, paragraphs (b)(1) and (c)(1) through (10) are revised to read as follows:

§ 178.345–14 Marking.

* * * * *

(b) * * *

(1) DOT-specification number DOT XXX (DOT XXX) where ''XXX'' is replaced with the applicable specification number. For cargo tanks having a variable specification plate, the DOT-specification number is replaced with the words ''See variable specification plate.''

* * * * *

(c) * * *

(1) Cargo tank motor vehicle manufacturer (CTMV mfr.).

(2) Cargo tank motor vehicle certification date (CTMV cert. date), if different from the cargo tank certification date.

(3) Cargo tank manufacturer (CT mfr.).

(4) Cargo tank date of manufacture (CT date if mfr.), month and year.

(5) Maximum weight of lading (Max. Payload), in pounds.

(6) Maximum loading rate in gallons per minute (Max. Load rate, GPM).

(7) Maximum unloading rate in gallons per minute (Max Unload rate).

(8) Lining material (Lining), if applicable.

(9) Heating system design pressure (Heating sys. press.), in psig, if applicable.

(10) Heating system design temperature (Heating sys. temp.), in °F, if applicable.

* * * * *

§ 178.346–1 [Amended]

■ 42. In § 178.346–1, the following changes are made:

(a) In paragraph (d)(6), the reference to ''§ 178.345–10'' is revised to read ''§ 178.346–3.''

(b) In paragraph (d)(7), the reference to ''§ 178.345–13'' is revised to read ''§ 178.346–5.''

■ 43. In § 178.346–2, the introductory text and the titles to Table I and Table II are revised to read as follows:

§ 178.346–2 Material and thickness of material.

The type and thickness of material for DOT 406 specification cargo tanks must conform to § 178.345–2, but in no case may the thickness be less than that determined by the minimum thickness requirements in § 178.320(a). The following Tables I and II identify the specified minimum thickness values to be employed in that determination.

Table I.—Specified Minimum Thickness of Heads (or Bulkheads and Baffles When Used as Tank Reinforcement) Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming

* * * * *

Table II.—Specified Minimum Thickness of Shell Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming [1]

* * * * *

[1] Maximum distance between bulkheads, baffles, or ring stiffeners shall not exceed 60 inches.

■ 44. In § 178.346–5, paragraph (c) is revised to read as follows:

§ 178.346–5 Pressure and leakage tests.

* * * * *

(c) *Leakage test.* A cargo tank used to transport a petroleum distillate fuel that is equipped with vapor recovery equipment may be leakage tested in accordance with 40 CFR 63.425(e). To satisfy the leakage test requirements of this paragraph, the test specified in 40 CFR 63.425(e)(1) must be conducted using air. The hydrostatic test alternative permitted under Appendix A to 40 CFR Part 60 (''Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test'') may not be used to satisfy the leakage test requirements of this paragraph. A cargo tank tested in accordance with 40 CFR 63.425(e) may be marked as specified in § 180.415 of this subchapter.

■ 45. In § 178.347–1, the following changes are made:

a. Paragraph (c) is revised.

b. In paragraph (d)(5), the reference to ''§§ 178.345–5 and 178.347–5'' is revised to read ''§ 178.347–3''.

c. In paragraph (d)(6), the reference to ''§ 178.345–10'' is revised to read ''§ 178.347-4''.

d. In paragraph (d)(7), the reference to ''§ 178.345–13'' is revised to read ''§ 178.347-5''.

e. Paragraph (d)(9) is added.

The additions and revisions read as follows:

§ 178.347–1 General requirements.

* * * * *

(c) Any cargo tank built to this specification with a MAWP greater than 35 psig and each tank designed to be loaded by vacuum must be constructed and certified in conformance with the ASME Code (incorporated by reference; see § 171.7 of this subchapter). The external design pressure for a cargo tank loaded by vacuum must be at least 15 psi.

(d) * * *

(9) The strength of a weld seam in a bulkhead that has not been radiographically examined shall be 0.85 of the strength of the bulkhead under the following conditions:

(i) The welded seam must be a full penetration butt weld.

(ii) No more than one seam may be used per bulkhead.

(iii) The welded seam must be completed before forming the dish radius and knuckle radius.

(iv) Compliance test: Two test specimens of materials representative of those to be used in the manufacture of a cargo tank bulkhead must be tested to failure in tension. The test specimen must be of the same thickness and joined by the same welding procedure. The test specimens may represent all the tanks that are made in the same facility within 6 months after the tests are completed. Before welding, the fit-up of the joints on the test specimens must represent production conditions that would result in the least joint strength. Evidence of joint fit-up and test results must be retained at the manufacturers' facility for at least 5 years.

(v) Acceptance criteria: The ratio of the actual tensile stress at failure to the actual tensile strength of the adjacent material of all samples of a test lot must be greater than 0.85.

■ 46. In § 178.347–2, paragraph (a) introductory text and the titles to Table I and Table II are revised to read as follows:

§ 178.347–2 Material and thickness of material.

(a) The type and thickness of material for DOT 407 specification cargo tanks must conform to § 178.345–2, but in no case may the thickness be less than that determined by the minimum thickness requirements in § 178.320(a). Tables I and II identify the specified minimum thickness values to be employed in that the determination:

Table I.—Specified Minimum Thickness of Heads (or Bulkheads and Baffles When Used as Tank Reinforcement) Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming

* * * * *

Table II.—Specified Minimum Thickness of Shell Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming

* * * * *

§ 178.348–1 [Amended]

■ 47. In § 178.348–1(e), the following changes are made:

(a) In paragraph (e)(2)(v), the reference to ''§§ 178.345–5 and 178.348–5'' is revised to read ''§ 178.345–5''.

(b) In paragraph (e)(2)(vi), the reference to ''§ 178.345–10'' is revised to read ''§ 178.348–4''.

(c) In paragraph (e)(2)(vii), the reference to ''§ 178.345–13'' is revised to read ''§ 178.348–5''.

■ 48. In § 178.348–2, paragraph (a) introductory text and the titles to Table I and Table II are revised to read as follows:

§ 178.348–2 Material and thickness of material.

(a) The type and thickness of material for DOT 412 specification cargo tanks must conform to § 178.345–2, but in no case may the thickness be less than that determined by the minimum thickness requirements in § 178.320(a). The following Tables I and II identify the ''Specified Minimum Thickness'' values to be employed in that determination.

Table I.—Specified Minimum Thickness of Heads (or Bulkheads and Baffles When Used as Tank Reinforcement) Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming

* * * * *

Table II.—Specified Minimum Thickness of Shell Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 50. In § 180.403, the definition for ''Corrosive to the tank/valve'' is removed and new definitions for ''Corroded or abraded'' and ''Corrosive to the tank or valve'' are added to read as follows:

§ 180.403 Definitions.

* * * * *

Corroded or abraded means any visible reduction in the material thickness of the cargo tank wall or valve due to pitting, flaking, gouging, or chemical reaction to the material surface that effects the safety or serviceability of the cargo tank. The term does not include cosmetic or minor surface degradation that does not effect the safety or serviceability of the cargo tank

Corrosive to the tank or valve means that the lading has been shown through experience or test data to reduce the thickness of the material of construction of the tank wall or valve.

* * * * *

■ 51. In § 180.405 paragraph (g)(3) is removed and reserved, paragraphs (b), (g)(2)(i), (k), and (l)(2)(iii) are revised, and a new paragraph (o) is added, to read as follows:

§ 180.405 Qualification of cargo tanks.

* * * * *

(b) *Cargo tank specifications.*

(1) To qualify as an authorized packaging, each cargo tank must conform to this subpart, the applicable requirements specified in part 173 of this subchapter for the specific lading, and where a DOT specification cargo tank is required, an applicable specification in effect on the date initial construction began: MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312, MC 330, MC 331, MC 338, DOT 406, DOT 407, or DOT 412 (§§ 178.337, 178.338, 178.345, 178.346, 178.347, 178.348 of this subchapter). However, except as provided in paragraphs (b)(2), (d), (e), (f)(5), and (f)(6) of this section, no cargo tank may be marked or certified after August 31, 1995, to the applicable MC 306, MC 307, MC 312, MC 331, or MC 338 specification in effect on December 30, 1990.

(2) *Exception.* A cargo tank originally manufactured to the MC 306, MC 307, or MC 312 specification that has not been stretched, rebarrelled, or modified may be re-certified to the original specification provided:

(i) Sufficient records are available verifying the cargo tank was originally manufactured to the specification;

(ii) A Design Certifying Engineer or Registered Inspector verifies the cargo tank conforms to all applicable requirements of the original specification and furnishes to the owner written documentation which verifies the tank complies with the original structural design requirements in effect at the time the tank was originally constructed;

(iii) The cargo tank meets all applicable tests and inspections required by § 180.407(c); and

(iv) The cargo tank is re-certified to the original specification in accordance with the reporting and record retention provisions of § 180.417. The certification documents required by § 180.417(a)(3) must include both the date the cargo tank was originally certified to the specification, and the date it was re-certified. The specification plate on the cargo tank or cargo tank motor vehicle must display the date the cargo tank was originally certified to the specification.

* * * * *

(g) * * *

(2) * * *

(i) Manhole assemblies on MC 300, MC 301, MC 302, MC 303, MC 305, MC 306, MC 310, MC 311, and MC 312 cargo tanks that are marked or certified in writing as conforming to § 178.345–5 of this subchapter or TTMA RP No. 61–98 (incorporated by reference; see § 171.7 of this subchapter), or are tested and certified in accordance with TTMA TB No. 107 (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

(k) *DOT-specification cargo tank with no marked design pressure or a marked design pressure of less than 3 psig.* The owner of an MC 300, MC 301, MC 302, MC 303, MC 305, MC 306, or MC 312 cargo tank with a pressure relief system set at 3 psig, must mark or remark the cargo tank with an MAWP or design pressure of not less than 3 psig.

(l) * * *

(2) * * *

(iii) The structure of the bumper must be designed in accordance with § 178.345–8(d)(3) of this subchapter.

* * * * *

(o) *On-truck remote control of self-closing stop valves—MC 330, MC 331, and MC 338.* On or before October 2, 2006—

(1) Each owner of an MC 330 or MC 331 cargo tank motor vehicle marked or certified before January 1, 1995, must equip the cargo tank with an on-vehicle remote means of closure of the internal self-closing stop valve in conformance with § 178.337–8(a)(4) of this subchapter. This requirement does not apply to cargo tanks used only for carbon dioxide and marked ''For carbon dioxide only'' or intended for use in chlorine service only.

(2) Each owner of an MC 338 cargo tank motor vehicle marked or certified before January 1, 1995, must equip each remotely controlled shutoff valve with an on-vehicle remote means of automatic closure in conformance with § 178.338–11(c) of this subchapter. This requirement does not apply to cargo tanks used for the transportation of argon, carbon dioxide, helium, krypton, neon, nitrogen, or xenon, or mixtures thereof.

■ 52. In § 180.407, the following changes are made:

■ (a) Paragraphs (b)(4) and (g)(1)(v) are removed and reserved.

■ (b) Paragraphs (d)(4), (d)(5), and (d)(6) are redesignated as (d)(5), (d)(6), and (d)(7) respectively.

■ (c) Paragraphs (a)(2), (b)(1), (b)(2), (c), (d)(1), (g)(1)(ii), , (g)(1)(iv) introductory text, (g)(4), (h)(1) introductory text, (i)(5) introductory text, titles and column headings to Tables I and II in (i)(5), and (i)(6) are revised.

■ (d) In the table in paragraph (c), the entry under ''Internal Visual Inspection'' for ''All insulated cargo tanks, except MC 330, MC 331, MC 338'' is revised and a New Note 4 to the table is added.

■ (e) Paragraphs (d) introductory text, (d)(4), (h) introductory text, (h)(1)(iv), (h)(1)(v), (i)(9), and (i)(10) are added.

The additions and revisions read as follows:

§ 180.407 Requirements for test and inspection of specification cargo tanks.

(a) * * *

(2) Except during a pressure test, a cargo tank may not be subjected to a pressure greater than its design pressure or MAWP.

* * * * *

(b) * * *

(1) The cargo tank shows evidence of dents, cuts, gouges, corroded or abraded areas, leakage, or any other condition that might render it unsafe for hazardous materials service. At a minimum, any area of a cargo tank showing evidence of dents, cuts, digs, gouges, or corroded or abraded areas must be thickness tested in accordance with the procedures set forth in paragraphs (i)(2), (i)(3), (i)(5), and (i)(6) of this section and evaluated in accordance with the criteria prescribed in § 180.411. Any signs of leakage must be repaired in accordance with

§ 180.413. The suitability of any repair affecting the structural integrity of the cargo tank must be determined either by the testing required in the applicable manufacturing specification or in paragraph (g)(1)(iv) of this section.

(2) The cargo tank has sustained damage to an extent that may adversely affect its lading retention capability. A damaged cargo tank must be pressure tested in accordance with the procedures set forth in paragraph (g) of this section.

* * * * *

(c) *Periodic test and inspection.* Each specification cargo tank must be tested and inspected as specified in the following table by an inspector meeting the qualifications in § 180.409. The retest date shall be determined from the specified interval identified in the following table from the most recent inspection or the CTMV certification date.

COMPLIANCE DATES—INSPECTIONS AND TEST UNDER § 180.407(C)

Test or inspection (cargo tank specification, configuration, and service)	Date by which first test must be completed (see Note 1)	Interval period after first test
*	*	*
Internal Visual Inspection: All insulated cargo tanks, except MC 330, MC 331, MC 338 (see Note 4).	September 1,1991	1 year.
*	*	*

* * * * *

Note 4: Insulated cargo tanks equipped with manholes or inspection openings may perform either an internal visual inspection in conjunction with the external visual inspection or a hydrostatic or pneumatic pressure-test of the cargo tank.

* * * * *

(d) *External visual inspection and testing.* The following applies to the external visual inspection and testing of cargo tanks:

(1) Where insulation precludes a complete external visual inspection as required by paragraphs (d)(2) through (d)(6) of this section, the cargo tank also must be given an internal visual inspection in accordance with paragraph (e) of this section. If external visual inspection is precluded because any part of the cargo tank wall is externally lined, coated, or designed to prevent an external visual inspection, those areas of the cargo tank must be internally inspected. If internal visual inspection is precluded because the cargo tank is lined, coated, or designed so as to prevent access for internal inspection, the tank must be hydrostatically or pneumatically tested in accordance with paragraph (g)(1)(iv) of this section. Those items able to be externally inspected must be externally inspected and noted in the inspection report.

* * * * *

(4) Ring stiffeners or other appurtenances, installed on cargo tanks constructed of mild steel or high-strength, low-alloy steel, that create air cavities adjacent to the tank shell that do not allow for external visual inspection must be thickness tested in accordance with paragraphs (i)(2) and (i)(3) of this section, at least once every 2 years. At least four symmetrically distributed readings must be taken to establish an average thickness for the ring stiffener or appurtenance. If any thickness reading is less than the average thickness by more than 10%, thickness testing in accordance with paragraphs (i)(2) and (i)(3) of this section must be conducted from the inside of the cargo tank on the area of the tank wall covered by the appurtenance or ring stiffener.

* * * * *

(g) * * *

(1) * * *

(ii) All self-closing pressure relief valves, including emergency relief vents and normal vents, must be removed from the cargo tank for inspection and testing.

(A) Each self-closing pressure relief valve that is an emergency relief vent must open at the required set pressure and seat to a leak-tight condition at 90 percent of the set-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification.

(B) Normal vents (1 psig vents) must be tested according to the testing criteria established by the valve manufacturer.

(C) Self-closing pressure relief devices not tested or failing the tests in this paragraph (g)(1)(ii) must be repaired or replaced.

* * * * *

(iv) Each cargo tank must be tested hydrostatically or pneumatically to the internal pressure specified in the following table. At no time during the pressure test may a cargo tank be subject to pressures that exceed those identified in the following table:

* * * * *

(4) All pressure bearing portions of a cargo tank heating system employing a medium such as, but not limited to, steam or hot water for heating the lading must be hydrostatically pressure tested at least once every 5 years. The test pressure must be at least the maximum system design operating pressure and must be maintained for five minutes. A heating system employing flues for heating the lading must be tested to ensure against lading leakage into the flues or into the atmosphere.

* * * * *

(h) *Leakage test.* The following requirements apply to cargo tanks requiring a leakage test:

(1) Each cargo tank must be tested for leaks in accordance with paragraph (c) of this section. The leakage test must include testing product piping with all valves and accessories in place and operative, except that any venting devices set to discharge at less than the leakage test pressure must be removed or rendered inoperative during the test. All internal or external self-closing stop valves must be tested for leak tightness. Each cargo tank of a multi-cargo tank motor vehicle must be tested with adjacent cargo tanks empty and at atmospheric pressure. Test pressure must be maintained for at least 5 minutes. Cargo tanks in liquefied compressed gas service must be externally inspected for leaks during the leakage test. Suitable safeguards must be provided to protect personnel should a failure occur. Cargo tanks may be leakage tested with hazardous materials contained in the cargo tank during the test. Leakage test pressure must be no less than 80% of MAWP marked on the specification plate except as follows:

* * * * *

(iv) An MC 330 or MC 331 cargo tank in dedicated service for anhydrous ammonia may be leakage tested at not less than 414 kPa (60 psig).

(v) A non-specification cargo tank required by § 173.8(d) of this subchapter to be leakage tested, must be leakage tested at not less than 16.6 kPa (2.4

psig), or as specified in paragraph (h)(2) of this section.

(2) Cargo tanks used to transport petroleum distillate fuels that are equipped with vapor collection equipment may be leak tested in accordance with the Environmental Protection Agency's ''Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test,'' as set forth in Appendix A to 40 CFR part 60. Test methods and procedures and maximum allowable pressure and vacuum changes are in 40 CFR 63.425(e)(1). The hydrostatic test alternative, using liquid in Environmental Protection Agency's ''Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test,'' may not be used to satisfy the leak testing requirements of this paragraph. The test must be conducted using air.

* * * * *

(i) * * *

(5) Minimum thicknesses for MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 cargo tanks are determined based on the definition of minimum thickness found in § 178.320(a) of this subchapter. The following Tables I and II identify the ''In-Service Minimum Thickness'' values to be used to determine the minimum thickness for the referenced cargo tanks. The column headed ''Minimum Manufactured Thickness'' indicates the minimum values required for new construction of DOT 400 series cargo tanks, found in Tables I and II of §§ 178.346–2, 178.347–2, and 178.348–2 of this subchapter. In-Service Minimum Thicknesses for MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 cargo tanks are based on 90 percent of the manufactured thickness specified in the DOT specification, rounded to three places.

TABLE I.—IN-SERVICE MINIMUM THICKNESS FOR MC 300, MC 303, MC 304, MC 306, MC 307, MC 310, MC 311, AND MC 312 SPECIFICATION CARGO TANK CONSTRUCTED OF STEEL AND STEEL ALLOYS

Minimum manufactured thickness (US gauge or inches)	Nominal decimal equivalent for (inches)	In-service minimum thickness reference (inches)

* * * * *

TABLE II.—IN-SERVUCE MINIMUM THICKNESS FOR MC 301, MC 302, MC 304, MC 305, MC 306, MC 307, MC 311, AND MC 312 SPECIFICATION CARGO TANKS CONSTRUCTED OF ALUMINUM AND ALUMINUM ALLOYS

Minimum manufactured thickness	In-service minimum thickness (inches)

* * * * *

(6) An owner of a cargo tank that no longer conforms to the minimum thickness prescribed for the design as manufactured may use the cargo tank to transport authorized materials at reduced maximum weight of lading or reduced maximum working pressure, or combinations thereof, provided the following conditions are met:

(i) A Design Certifying Engineer must certify that the cargo tank design and thickness are appropriate for the reduced loading conditions by issuance of a revised manufacturer's certificate, and

(ii) The cargo tank motor vehicle's nameplate must reflect the revised service limits.

* * * * *

(9) For MC 331 cargo tanks constructed before October 1, 2003, minimum thickness shall be determined by the thickness indicated on the U1A form minus any corrosion allowance. For MC 331 cargo tanks constructed after October 1, 2003, the minimum thickness will be the value indicated on the specification plate. If no corrosion allowance is indicated on the U1A form then the thickness of the tank shall be the thickness of the material of construction indicated on the UIA form with no corrosion allowance.

(10) For 400-series cargo tanks, minimum thickness is calculated according to tables in each applicable section of this subchapter for that specification: § 178.346–2 for DOT 406 cargo tanks, § 178.347–2 for DOT 407 cargo tanks, and § 178.348–2 for DOT 412 cargo tanks.

■ 53. In § 180.409, paragraphs (a)(1) and (a)(2) are revised, and paragraph (a)(3)is added to read as follows:

§ 180.409 Minimum qualifications for inspectors and testers.

(a) * * *

(1) Be registered with the Federal Motor Carrier Safety Administration in accordance with part 107, subpart F of this chapter,

(2) Be familiar with DOT-specification cargo tanks and trained and experienced in use of the inspection and testing equipment needed, and

(3) Have the training and experience required to meet the definition of ''Registered Inspector'' in § 171.8 of this chapter.

* * * * *

■ 54. Section 180.413 is revised to read as follows:

§ 180.413 Repair, modification, stretching, rebarrelling, or mounting of specification cargo tanks.

(a) *General.* Any repair, modification, stretching, rebarrelling, or mounting of a cargo tank must be performed in conformance with the requirements of this section.

(1) Except as otherwise provided in this section, each repair, modification, stretching, or rebarrelling of a specification cargo tank must be performed by a repair facility holding a valid National Board Certificate of Authorization for use of the National Board ''R'' stamp and must be made in accordance with the edition of the National Board Inspection Code in effect at the time the work is performed.

(i) Repairs, modifications, stretchings, and rebarrellings performed on non-ASME stamped specification cargo tanks may be performed by:

(A) A cargo tank manufacturer holding a valid ASME Certificate of Authorization for the use of the ASME ''U'' stamp using the quality control procedures used to obtain the Certificate of Authorization; or

(B) A repair facility holding a valid National Board Certificate of Authorization for use of the National Board ''R'' stamp using the quality control procedures used to obtain the Certificate of Authorization.

(ii) A repair, modification, stretching, or rebarrelling of a non-ASME stamped cargo tank may be done without certification by an Authorized Inspector, completion of the R–1 form, or being stamped with the ''R'' stamp.

(2) Prior to each repair, modification, stretching, rebarrelling, or mounting, the cargo tank motor vehicle must be emptied of any hazardous material lading. In addition, cargo tank motor vehicles used to transport flammable or toxic lading must be sufficiently cleaned of residue and purged of vapors so any potential hazard is removed, including void spaces between double bulkheads, piping and vapor recovery systems.

(3) Each person performing a repair, modification, stretching, rebarrelling or mounting of a DOT specification cargo tank must be registered in accordance with subpart F of part 107 of this chapter.

(b) *Repair.* The suitability of each repair affecting the structural integrity or lading retention capability of the cargo tank must be determined by the testing required either in the applicable manufacturing specification or in § 180.407(g)(1)(iv). Each repair of a cargo tank involving welding on the shell or head must be certified by a Registered Inspector. The following provisions apply to specific cargo tank repairs:

(1) DOT 406, DOT 407, and DOT 412 cargo tanks must be repaired in accordance with the specification requirements in effect at the time of repair;

(2) MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306 cargo tanks must be repaired in accordance with either the most recent revision of the original specification or with the DOT 406 specification in effect at the time of repair;

(3) MC 304 and MC 307 cargo tanks must be repaired in accordance with either the most recent revision of the original specification or with the DOT 407 specification in effect at the time of repair;

(4) MC 310, MC 311, and MC 312 cargo tanks must be repaired in accordance with either the most recent revision of the original specification or with the DOT 412 specification in effect at the time of repair;

(5) MC 338 cargo tanks must be repaired in accordance with the specification requirements in effect at the time of repair; and

(6) MC 330 and MC 331 cargo tanks must be repaired in accordance with the repair procedures described in CGA Technical Bulletin TB–2 and the National Board Inspection Code (see § 171.1 of this subchapter). Each cargo tank having cracks or other defects requiring welded repairs must meet all inspection, test, and heat treatment requirements in § 178.337–16 of this subchapter in effect at the time of the repair, except that postweld heat treatment after minor weld repairs is not required. When a repair is made of defects revealed by the wet fluorescent magnetic particle inspection, including those repaired by grinding, the affected area of the cargo tank must again be examined by the wet fluorescent magnetic particle method after hydrostatic testing to assure that all defects have been removed.

(c) *Maintenance or replacement of piping, valves, hoses, or fittings.* After each repair, maintenance or replacement of a pipe, valve, hose, or fitting on a cargo tank, that component must be installed in accordance with the provisions of the applicable specification before the cargo tank is returned to service.

(1) After maintenance or replacement that does not involve welding on the cargo tank wall, the repaired or replaced piping, valve, hose or fitting must be tested for leaks. This requirement is met when the piping, valve, hose or fitting is tested after installation at not less than 80 percent of the design pressure marked on the cargo tank. A hose may be tested before or after installation on the cargo tank.

(2) After repair or replacement of piping, valves, or fittings that involves welding on the cargo tank wall, the cargo tank must be pressure tested in accordance with the applicable manufacturing specification or § 180.407(g)(1)(iv). In addition, the affected piping, valve, or fitting must be tested in accordance with paragraph (c)(1) of this section.

(3) Hoses on cargo tanks in dedicated liquefied compressed gas, except carbon dioxide, service are excepted from these testing requirements, but must be tested in accordance with § 180.416(f).

(d) *Modification, stretching, or rebarrelling.* Modification, stretching or rebarrelling of a cargo tank motor vehicle must conform to the following provisions:

(1) The design of the modified, stretched, or rebarrelled cargo tank motor vehicle must be certified in writing by a Design Certifying Engineer as meeting the structural integrity and accident damage protection requirements of the applicable specification.

(2) Except as provided in paragraph (d)(2)(v) of this section, all new material and equipment affected by modification, stretching, or rebarrelling must meet the requirements of the specification in effect at the time such work is performed, and all applicable structural integrity requirements (§ 178.337–3, § 178.338–3, or § 178.345–3 of this subchapter). The work must conform to the requirements of the applicable specification as follows:

(i) For specification MC 300, MC 301, MC 302, MC 303, MC 305 and MC 306 cargo tanks, the provisions of either specification MC 306 or DOT 406 until August 31, 1995 and, thereafter to specification DOT 406 only;

(ii) For specification MC 304 and MC 307 cargo tanks, the provisions of either specification MC 307 or DOT 407 until August 31, 1995 and, thereafter to specification DOT 407 only;

(iii) For specification MC 310, MC 311, and MC 312 cargo tanks, the provisions of either specification MC 312 or DOT 412 until August 31, 1995 and, thereafter to specification DOT 412 only;

(iv) For specification MC 330 cargo tanks, the provisions of specification MC 331; and

(v) For specification MC 338 cargo tanks, the provisions of specification MC 338. However, structural modifications to MC 338 cargo tanks authorized under § 180.405(d) may conform to applicable provisions of the ASME Code instead of specification MC 338, provided the structural integrity of the modified cargo tank is at least equivalent to that of the original cargo tank.

(3) The person performing the modification, stretching, or rebarrelling must:

(i) Have knowledge of the original design concept, particularly with respect to structural design analysis, material and welding procedures.

(ii) Assure compliance of the rebuilt cargo tank's structural integrity, venting, and accident damage protection with the applicable specification requirements.

(iii) Assure compliance with all applicable Federal Motor Carrier Safety Regulations for all newly installed safety equipment.

(iv) Assure the suitability of each modification, stretching and rebarrelling that affects the lading retention capability of the cargo tank by performing the tests required in the applicable specification or § 180.407(g)(1)(iv).

(v) Any modification that changes information displayed on the specification plate requires the installation of a supplemental specification plate, nameplate, or both containing the information that reflects the cargo tank as modified, stretched or rebarrelled. The plate must include the name of the person or facility doing the work, DOT registration number, date work is completed, retest information, and any other information that differs from the original plate. The supplemental plates must be installed immediately adjacent to the existing plate or plates.

(vi) On a variable specification cargo tank, install a supplemental or new variable specification plate, and replace the specification listed on the original specification plate with the words ''see variable specification plate.''

(4) A Registered Inspector must certify that the modified, stretched, or rebarrelled cargo tank conforms to the requirements of this section and the applicable specification by issuing a supplemental certificate of compliance. The registration number of the Registered Inspector must be entered on the certificate.

(e) *Mounting of cargo tanks.* Mounting a cargo tank on a cargo tank motor vehicle must be:

(1) Performed as required by paragraph (d)(2) of this section and certified by a Design Certifying Engineer if the mounting of a cargo tank on a motor vehicle chassis involves welding on the cargo tank head or shell or any change or modification of the methods of attachment; or

(2) In accordance with the original specification for attachment to the chassis or the specification for attachment to the chassis in effect at the time of the mounting, and performed under the supervision of a Registered Inspector if the mounting of a cargo tank on a motor vehicle chassis does not involve welding on the cargo tank head or shell or a change or modification of the methods of attachment.

(f) *Records.* Each owner of a cargo tank motor vehicle must retain at the owner's principal place of business all records of repair, modification, stretching, or rebarrelling, including notation of any tests conducted to verify the suitability of the repair, modification, stretching, or rebarrelling made to each cargo tank during the time the cargo tank motor vehicle is in service and for one year thereafter. Copies of these records must be retained by a motor carrier, if not the owner of the cargo tank motor vehicle, at its principal place of business during the period the cargo tank motor vehicle is in the carrier's service.

■ 55. In § 180.415, paragraph (b) is revised to read as follows:

§ 180.415 Test and inspection markings.

* * * * *

(b) Each cargo tank must be durably and legibly marked, in English, with the date (month and year) and the type of test or inspection performed, subject to the following provisions:

(1) The date must be readily identifiable with the applicable test or inspection.

(2) The markings must be in letters and numbers at least 32 mm (1.25 inches) high, near the specification plate or anywhere on the front head.

(3) The type of test or inspection may be abbreviated as follows:

(i) V for external visual inspection and test;

(ii) I for internal visual inspection;

(iii) P for pressure test;

(iv) L for lining inspection;

(v) T for thickness test; and

(vi) K for leakage test for a cargo tank tested under § 180.407, except § 180.407(h)(2); and

(vii) K-EPA27 for a cargo tank tested under § 180.407(h)(2) after October 1, 2004.

Examples to paragraph (b). The markings ''10–99 P, V, L'' represent that in October 1999, a cargo tank passed the prescribed pressure test, external visual inspection and test, and the lining inspection. The markings ''2–00 K–EPA'' represent that in February 2000, a cargo tank passed the leakage test under § 180.407(h)(2). The markings ''2–00 K, K–EPA'' represent that in February 2000, a cargo tank passed the leakage test under both § 180.407(h)(1) and under EPA Method 27 under § 180.407(h)(2).

* * * * *

■ 55. In § 180.417, paragraphs (b) and (d) are revised to read as follows:

§ 180.417 Reporting and record retention requirements.

* * * * *

(b) *Test or inspection reporting.* Each person performing a test or inspection as specified in § 180.407 must prepare a written report, in English, in accordance with this paragraph.

(1) Each test or inspection report must include the following information:

(i) Owner's and manufacturer's unique serial number for the cargo tank;

(ii) Name of cargo tank manufacturer;

(iii) Cargo tank DOT or MC specification number;

(iv) MAWP of the cargo tank;

(v) Minimum thickness of the cargo tank shell and heads;

(vi) Indication of whether the cargo tank is lined, insulated, or both; and

(vii) Indication of special service of the cargo tank (*e.g.*, transports material corrosive to the tank, dedicated service, etc.)

(2) Each test or inspection report must include the following specific information as appropriate for each individual type of test or inspection:

(i) Type of test or inspection performed;

(ii) Date of test or inspection (month and year);

(iii) Listing of all items tested or inspected, including information about pressure relief devices that are removed, inspected and tested or replaced, when applicable (type of device, set to discharge pressure, pressure at which device opened, pressure at which device re-seated, and a statement of disposition of the device (*e.g.*, reinstalled, repaired, or replaced)); information regarding the inspection of upper coupler assemblies, when applicable (visually examined in place, or removed for examination); and, information regarding leakage and pressure testing, when applicable (pneumatic or hydrostatic testing method, identification of the fluid used for the test, test pressure, and holding time of test);

(iv) Location of defects found and method of repair;

(v) ASME or National Board number of person performing repairs, if applicable;

(vi) Name and address of person performing test;

(vii) Registration number of the facility or person performing the test;

(viii) Continued qualification statement, such as Acargo tank meets the requirements of the DOT-specification identified on this report'' or ''cargo tank fails to meet the requirements of the DOT-specification identified on this report'';

(ix) DOT registration number of the registered inspector; and

(x) Dated signature of the registered inspector and the cargo tank owner.

(3) The owner and the motor carrier, if not the owner, must each retain a copy of the test and inspection reports until the next test or inspection of the same type is successfully completed. This requirement does not apply to a motor carrier leasing a cargo tank for fewer than 30 days.

(c) * * *

(d) *Supplying certificates and reports.* Each person offering a DOT-specification cargo tank for sale or lease must provide the purchaser or lessee a copy of the cargo tank certificate of compliance, records of repair, modification, stretching, or rebarrelling; and the most recent inspection and test reports made under this section. Copies

of such reports must be provided to the lessee if the cargo tank is leased for more than 30 days.

Issued in Washington, DC on April 7, 2003, under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 03–9070 Filed 4–17–03; 8:45 am]

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Federal Register

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April 18, 2003

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 8 and 38

Federal Acquisition Regulation; Federal Supply Schedules Services and Blanket Purchase Agreements (BPAs); Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 38

[FAR Case 1999–603]

RIN 9000–AJ63

Federal Acquisition Regulation; Federal Supply Schedules Services and Blanket Purchase Agreements (BPAs)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to incorporate policies for services and to strengthen the procedures for establishing Blanket Purchase Agreements under the Federal Supply Schedules.

DATES: Interested parties should submit comments in writing on or before June 17, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.1999–603@gsa.gov*.

Please submit comments only and cite FAR case 1999–603 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 1999–603.

SUPPLEMENTARY INFORMATION:

A. Background

The Multiple Award Schedules (MAS) program, directed and managed by the General Services Administration (GSA), provides Federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying. For much of its history, the MAS focused on the sale of products. In recent years, however, GSA has sought to facilitate broad access to service contractors. This general transformation of the schedules program has coincided with a trend in Federal procurement towards acquiring managed solutions from the marketplace. The amount of services acquisition from the MAS has grown steadily as agencies increasingly turn to schedule contractors to meet their needs.

To assist its customers, GSA developed ''special ordering procedures'' that address the acquisition of services.

However, because FAR subpart 8.4 has remained primarily geared towards products, agencies have been inconsistent in adhering to certain basic acquisition requirements when buying services off the MAS, such as in their use of statements of work, effective pricing of orders, application of competition, and proper documentation of award decisions.

The FAR Council seeks to significantly improve the application of acquisition basics on MAS purchases for services and reinforce sound MAS practices generally. To achieve this result, the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are proposing numerous amendments to FAR subpart 8.4. In developing these changes, the CAAC and DARC, in coordination with the FAR Council, carefully considered the findings and recommendations made by the General Accounting Office in its report no. GAO–01–125, Contract Management: Not Following Procedures Undermines Best Pricing Under GSA's Schedule.

Accordingly, the rule proposes to amend FAR subpart 8.4 to—

- Add new coverage on use of statements of work when acquiring services from the schedules;
- Clarify and strengthen the procedures for establishing Blanket Purchase Agreements against the schedules;
- Reinforce documentation requirements generally and address the documentation of sole source orders in particular;
- Highlight the availability of ''e-Buy,'' GSA's electronic quote system, to encourage greater transparency through use of electronic media;
- Add new coverage to allow agencies to make payment for oral or written orders by any authorized means, including the Governmentwide commercial purchase card;
- Clarify the procedures for termination for cause and convenience; and
- Reorganize and revise the subpart text for ease of use.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule addresses internal Government administrative procedures and does not impose any additional requirements on Government offerors or contractors. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR parts 8 and 38 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–603), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq*.

List of Subjects in 48 CFR Parts 8 and 38

Government procurement.

Dated: April 14, 2003.

Cecelia L. Davis,

Acting Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 8 and 38 as set forth below:

1. The authority citation for 48 CFR parts 8 and 38 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Amend section 8.401 by revising paragraphs (a), (b), and (c); and by removing from the introductory text of paragraph (d) and (d)(2) the word ''office'' and adding in its place. The revised text reads as follows:

8.401 General.

(a) The Federal Supply Schedule program, directed and managed by the General Services Administration (GSA), provides Federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying (also *see* 8.002). Indefinite delivery contracts are awarded with commercial firms to provide supplies and services at stated prices for given periods of time. The Department of Defense manages a similar system of schedule-type contracting for military items. The Department of Defense systems are not covered by this subpart.

(b) The GSA schedule contracting office issues Federal Supply Schedules publications containing the information necessary for placing delivery or task orders with schedule contractors. Ordering offices issue orders directly to the schedule contractors. Ordering offices may request copies of schedules by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the—

GSA Centralized Mailing List Service (7CAFL), PO Box 6477, Fort Worth, TX 76115.

Copies of GSA Form 457 also may be obtained from this address.

(c) GSA offers an on-line shopping service called ''GSA Advantage!.'' It enables ordering offices to search specific information (*i.e.*, national stock number, part number, common name), review delivery options, place orders directly with contractors (or ask GSA to place orders on the agency's behalf), and pay contractors for orders using the Governmentwide commercial purchase card (or pay GSA). Ordering offices may access the ''GSA Advantage!'' shopping service at *http://www.gsaadvantage.gov*. GSA's electronic quote system, ''e-Buy,'' which may be accessed through GSA Advantage!, provides a medium for transmitting notice to contractors of the ordering office's needs. For more information or assistance, contact GSA at Internet e-mail address: *gsa.advantage@gsa.gov*.

* * * * *

3. Revise section 8.402 to read as follows:

8.402 Applicability.

Procedures in this subpart apply to orders placed against Federal Supply Schedules. GSA may have established special ordering procedures for a particular schedule in which case that schedule will specify those special ordering procedures.

4. Add section 8.403 to read as follows:

§ 8.403 Use of Federal Supply Schedules.

(a) *General.* Parts 13, except 13.303–2(c)(3), 15, and 19 do not apply to orders placed against Federal Supply Schedules (*see* 8.404–5). Orders and Blanket Purchase Agreements placed against a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued using full and open competition (*see* 6.102(d)(3)). Therefore, when establishing a Blanket Purchase Agreement or placing orders under Federal Supply Schedules using the procedures of 8.404, ordering offices need not seek further competition, synopsize the requirement, or consider small business programs.

(b) *Acquisition planning.* Orders placed under a Federal Supply Schedule contract are not exempt from the development of acquisition plans (*see* subpart 7.1), and an information technology acquisition strategy (*see* Part 39).

(c) *Pricing.* Supplies offered on the schedule are listed at fixed prices. Services offered on the schedule are priced either at hourly rates or at a fixed price for performance of a specific task (*e.g.*, installation, maintenance, and repair). GSA has already determined the prices of supplies and fixed-price services and rates for services offered at hourly rates under schedule contracts to be fair and reasonable. Therefore, ordering offices are not required to make a separate determination of fair and reasonable pricing except for a price evaluation as required by 8.404–2(c)(3). By placing an order against a schedule contract using the procedures in 8.404, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

5. Revise section 8.404 and the section heading to read as follows:

§ 8.404 Ordering procedures for Federal Supply Schedules.

Ordering offices shall use the ordering procedures of this section when placing an order or establishing a Blanket Purchase Agreement (BPA) for supplies or services. The procedures in this section, other than those in 8.404–8, apply to all optional and mandatory use schedules. The procedures in 8.404–8 apply only to mandatory use schedules.

6. Add sections 8.404–1 and 8.404–2 to read as follows:

§ 8.404–1 Ordering procedures for supplies and fixed-price services.

(a) Ordering offices shall use the procedures of this subsection for ordering supplies and for ordering services that are listed in the schedule contracts as a fixed price for the performance of a specific task (*e.g.*, installation, maintenance and repair).

(b) *Orders at or below the micro-purchase threshold.* Ordering offices may place orders at or below the micro-purchase threshold with any Federal Supply Schedule contractor that can meet the agency's needs.

(c) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* Place orders with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, an ordering office shall consider reasonably available information about the supply or service offered under MAS contracts by using the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors (*see* 8.404–5). Select the delivery and other options available under the schedule that offers the best value to meet the agency's needs. The ordering office may consider among other factors—

(1) Special features of the supply or service required for effective program performance;

(2) Trade-in considerations;

(3) Probable life of the item selected as compared with that of a comparable item;

(4) Warranty considerations;

(5) Maintenance availability;

(6) Past performance; and

(7) Environmental and energy efficiency considerations.

(d) *Orders exceeding the maximum order threshold.* Each schedule contract has an established maximum order threshold. This threshold represents the point where it is advantageous for the ordering office to seek a price reduction. In addition to following the procedures in paragraph (c) of this section and before placing an order that exceeds the maximum order threshold or establishing a Blanket Purchase Agreement (BPA) (*see* 8.404–3), ordering offices shall—

(1) Review an appropriate number of additional schedule contractors' catalogs or pricelists, or use the GSA Advantage! on-line shopping service;

(2) Based upon the initial evaluation, seek price reductions from the schedule contractor(s) considered to offer the best value (*see* 8.403); and

(3) After seeking price reductions, place the order with the schedule contractor that provides the best value (*see* 8.403). If further price reductions are not offered, an order may still be placed.

§ 8.404–2 Ordering procedures for services using a statement of work.

(a) Ordering offices shall use the procedures in this subsection when ordering services priced at hourly rates in the schedule contracts. The applicable services will be identified in the Federal Supply Schedule publications and the contractor's catalogs/pricelists.

(b) *Orders at or below the micro-purchase threshold.* Ordering offices may place orders at or below the micro-purchase threshold with any Federal Supply Schedule contractor that can meet the agency's needs.

(c) *For orders exceeding the micro-purchase threshold.* The ordering office shall develop a statement of work. All statements of work shall include the work to be performed, location of work, period of performance, deliverable schedule, applicable standards, and any special requirements (*e.g.*, security clearances, travel, special knowledge).

(1) Agencies shall use performance-based statements of work to the maximum extent practicable. When preparing statements of work, ordering offices shall, to the maximum extent practicable—

(i) Describe the requirements in terms of results required rather than the methods of performance of the work;

(ii) Rely on the use of measurable performance standards and financial incentives to encourage innovative and cost effective methods of performing the work; and

(iii) Develop a quality assurance surveillance plan that will be used to monitor performance.

(2)(i) For proposed orders not expected to exceed the maximum order threshold, the ordering office must provide the statement of work, and selection criteria (*e.g.*, experience and past performance) to at least three schedule contractors. Schedule contractors should be requested to submit firm-fixed prices to perform the services identified in the statement of work.

(ii) For proposed orders exceeding the maximum order threshold or for establishing a BPA (*see* 8.404–3), the ordering office shall, in addition to meeting the requirements of paragraph (c)(2)(i), provide the statement of work and selection criteria to an appropriate number of additional schedule contractors that offer services that will meet the agency needs.

(iii) The ordering office shall provide the statement of work and selection criteria to any schedule contractor who requests a copy of it.

(3) The ordering office shall evaluate responses received against the selection criteria provided to the schedule contractors. The ordering office is responsible for considering the level of effort and mix of labor proposed to perform a specific task being ordered and for making a determination that the total price is reasonable. Place the order or establish the BPA with the schedule contractor that represents the best value (*see* 8.403).

(4) To the maximum extent practicable, ordering offices shall develop quality assurance surveillance plans (*see* 37.602–2) when using a performance-based statement of work. These plans shall recognize the responsibility of the contractor (*see* 46.105) to carry out its quality control obligations and shall contain measurable inspection and acceptance criteria corresponding to the performance standards contained in the statement of work. The quality assurance surveillance plans shall focus on the level of performance required by the statement of work, rather than the methodology used by the contractor to achieve that level of performance.

7. Revise section 8.404–3 and the section heading to read as follows:

8.404–3 Blanket purchase agreements (BPAs).

(a)(1) *Establishment.* Ordering offices may establish BPAs under any schedule contract to fill repetitive needs for supplies or services. BPAs may be established with one or more schedule contractors. The number of BPAs to be awarded is within the discretion of the office establishing the BPA. The number of BPA awards should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). In determining how many BPAs to award, consider—

(i) The scope and complexity of the requirement(s);

(ii) The technical qualifications of the Schedule contractor(s);

(iii) The administrative costs of BPAs; and

(iv) The need to periodically compare multiple technical approaches or prices.

(2) Award of a single BPA or multiple BPAs shall be made using the procedures of 8.404–1 or 8.404–2. BPAs shall address the frequency of ordering, invoicing, discounts, requirements (*e.g.* estimated quantities, work to be performed), delivery locations, and time. In addition, multiple BPAs shall specify the procedures for placing orders under the BPA.

(3) Establishment of a multi-agency BPA against a Federal Supply Schedule is permitted if all participating agencies are signatories to the BPA.

(b) *Ordering from blanket purchase agreements (BPAs)—(1) Single award BPA.* If the ordering office awards one BPA, authorized users may place the order directly under the established BPA when the need for the supply or service arises.

(2) *Multiple BPAs.* If the ordering office awards multiple BPAs, before placing an order exceeding $2,500, the ordering office shall—

(i) Forward the requirement or statement of work along with the selection criteria to the number of BPA holders according to the procedures provided in the BPA;

(ii) Evaluate the responses received and make a best value determination (see 8.403); and

(iii) Award the order to the schedule contractor that represents the best value.

(3) If the BPA is for hourly rate services, the ordering office shall develop a statement of work for requirements covered by the BPA, unless the BPA contains fixed prices for specific tasks. All orders under the BPA shall specify a price for the performance of the specific task identified in the statement of work.

(c) *Review of BPAs.* Ordering offices shall review BPAs at least once a year. The purpose of the review is to determine whether the BPA still represents the best value (*see* 8.403). During the annual review, agencies shall consider whether additional price reductions could be obtained if estimated quantities/amounts have been exceeded and seek price reductions where possible.

8. Add sections 8.404–4, 8.404–5, 8.404–6, 8.404–7, and 8.404–8 to read as follows:

8.404–4 Price reductions.

In addition to the circumstances in paragraph 8.404–1(d), there may be other reasons to request a price reduction. For example, ordering offices should seek a price reduction when the supply or service is available elsewhere at a lower price or when establishing a BPA to fill recurring requirements. The potential volume of orders under BPAs, regardless of the size of the individual order, offers the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order.

8.404–5 Small business.

When conducting evaluations or establishing a BPA and before placing an order, consider including, if available, one or more small business, veteran-owned small business, service-

disabled veteran-owned small, HUBZone small business, women-owned small business, or small disadvantaged business schedule contractor(s). Orders placed against the schedules may be credited toward the ordering agency's small business goals. For orders exceeding the micro-purchase threshold, ordering offices should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement. Ordering offices should survey GSA Advantage! and the Schedules e-Library at *http://www.fss.gsa.gov* for specific size status information for all schedule contractors.

8.404–6 Documentation.

(a) The ordering office shall document, at a minimum—

(1) The number and identity of the contracts reviewed and considered and the contractor from whom the supply or service was purchased;

(2) The supply or service purchased;

(3) The amount paid; and

(4) The circumstances and rationale for restricting consideration of schedule contractors to less than that required in 8.404–1 or 8.404–2, such as—

(i) Only one source is capable of responding due to the unique or specialized nature of the work;

(ii) The new work is a logical follow-on to an existing order provided that the original order was awarded in accordance with 8.404–1 or 8.404–2; or

(iii) An item peculiar to one manufacturer. A brand name item available on various schedule contracts is an item peculiar to one manufacturer.

(5) *Sole source requirements.* (i) Orders placed under the Federal Supply Schedules are exempt from the requirements in Part 6. However, ordering offices shall—

(A) Conduct sole source requirements, as defined in 2.101, under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraph (a)(5)(ii) of this section; and

(B) Prepare sole source justifications using the format at 6.303–2, modified to reflect an acquisition under the authority of Section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 501).

(ii) Justifications and approvals are required only for sole source requirements.

(A) For proposed orders exceeding $100,000, but not exceeding $500,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(B) For a proposed order exceeding $500,000, but not exceeding $10,000,000, the competition advocate for the procuring activity, designated pursuant to 6.501, or an official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.

(C) For a proposed order exceeding $10,000,000 but not exceeding $50,000,000, the head of the ordering agency or the official described in 6.304(a)(3) and (a)(4) shall approve the justification and approval. This authority is not delegable.

(D) For a proposed order exceeding $50,000,000, the official described in 6.304(a)(4) shall approve the justification and approval. This authority is not delegable, except as provided in 6.304(a)(4).

(b) Additionally, for services acquired using the procedures at 8.404–2, the ordering office shall also document, at a minimum—

(1) The evaluation methodology used in selecting the contractor for award;

(2) The rationale for any tradeoffs in making the award decision;

(3) The price reasonableness determination required by 8.404–2(c)(3); and

(4) The rationale for using other than—

(i) A firm-fixed price order; or

(ii) A performance-based order.

8.404–7 Payment.

Agencies may make payments for oral or written orders by any authorized means, including the Governmentwide commercial purchase card.

8.404–8 Ordering procedures for mandatory use schedules.

(a) This subsection applies only to orders against schedule contracts with mandatory users. When ordering from multiple-award schedules, mandatory users shall also follow the procedures provided in this section for optional use schedules, as appropriate.

(b) Ordering offices shall not solicit bids, proposals, quotations, or otherwise test the market solely for the purpose of seeking alternative sources to Federal Supply Schedules.

(c) Schedules identify executive agencies required to use them as mandatory sources of supply. The single-award schedule shall be used as a primary source and the multiple-award schedule as a secondary source. Mandatory use of schedules is not a requirement if—

(1) The schedule contractor is unable to satisfy the ordering office's urgent delivery requirement;

(2) The order is below the minimum order thresholds;

(3) The order is above the maximum order limitation;

(4) The consignee is located outside the area of geographical coverage stated in the schedule; and

(5) A lower price for an identical item (*i.e.*, same make and model) is available from another source.

(d) After any consultation required by the schedule, ordering offices are not required to forego or postpone their legitimate needs pending the award or renewal of any schedule contract.

(e)(1) When an ordering office that is a mandatory user under a schedule determines that supplies or services available from the schedule will not meet its specific needs, but similar supplies or services from another source will, it shall submit a request for waiver to the—Commissioner, Federal Supply Service (F), GSA, Washington, DC 20406.

(2) Ordering offices shall not initiate action to acquire similar supplies or services from nonschedule sources until a request for waiver is approved by the Commissioner of the Federal Supply Service, except as otherwise provided in inter-agency agreements. Requests shall contain the following information:

(i) A complete description of the required supply or service, whenever possible; *e.g.*, descriptive literature such as cuts, illustrations, drawings, and brochures that explain the characteristics and/or construction.

(ii) A comparison of prices and the technical differences between the requested supply or service and the schedule supply or service, identifying as a minimum the—

(A) Inadequacies of the schedule supply or service to perform required functions; and

(B) Technical, economic, or other advantages of the supply or service requested.

(iii) Quantity required.

(iv) Estimated annual usage or a statement that the requirement is nonrecurrent or unpredictable.

9. Amend section 8.405–2 by revising the introductory paragraph; and by removing from paragraph (h) ''must'' and adding ''shall'' in its place. The revised text reads as follows:

8.405–2 Order placement.

Ordering offices may place orders orally or use Optional Form 347, an agency-prescribed form, or an established electronic communications format to order supplies or services from schedules. The ordering office shall place orders directly with the contractor within the limitations specified in each

schedule. Orders shall include the following information in addition to any information required by the schedule:

* * * * *

10. Revise sections 8.405–3 and 8.405–4, 8.405–5, and 8.405–6 and their section headings to read as follows:

8.405–3 Inspection and acceptance.

(a) *Supplies.* (1) Consignees shall inspect supplies at destination except when—

(i) The schedule indicates that mandatory source inspection is required by the schedule contracting agency; or

(ii) A schedule item is covered by a product description, and the ordering office determines that the schedule contracting agency's inspection assistance is needed (based on the ordering volume, the complexity of supplies, or the past performance of the supplier).

(2) When the schedule contracting agency performs the inspection, the ordering office will provide two copies of the order specifying source inspection to the schedule contracting agency. The schedule contracting agency will notify the ordering office of acceptance or rejection of the supplies.

(3) Material inspected at source by the schedule contracting agency, and determined to conform with the product description of the schedule, shall not be reinspected for the same purpose. The consignee shall limit inspection to quantity and condition on receipt.

(4) Unless otherwise provided in the schedule, acceptance is conclusive, except as regards for latent defects, fraud, or gross mistakes as that amount to fraud.

(b) *Services.* (1) The ordering office has the right to inspect and test all services called for by the order, to the extent practicable, at all times and places during the period of the order. The ordering office shall perform inspections and tests as specified in the quality assurance surveillance plan in a manner that will not unduly delay the work.

(2) If the ordering office performs inspections or tests on the premises of the contractor or a subcontractor, the contractor shall furnish, and shall require subcontractors to furnish, at no increase in order price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

8.405–4 Remedies for inadequate performance.

(a) If the contractor fails to perform an order, the ordering office may terminate for cause or modify the order to establish a new delivery date (after obtaining consideration, as appropriate).

(b) If a contractor delivers a supply or service, but it does not conform to the order requirements, the ordering office may require the contractor to correct the defect by reperformance, at no increase in order price.

(c) If reperformance will not correct the defects or is not possible, the ordering office may require the contractor to ensure that future performance conforms to order requirements and may reduce the order price to reflect its reduced value.

(d) If the contractor does not promptly perform or does not take action to ensure conformity for future performance, the ordering office may terminate the order for cause. Ordering offices shall follow the procedures at 8.405–5 when terminating an order for cause.

8.405–5 Termination for cause.

(a) An ordering agency contracting officer may terminate individual orders for cause. Terminations for cause shall comply with FAR 12.403. (b)(1) The schedule contracting office shall be notified of all cases where an ordering agency contracting officer has terminated an individual order by a Federal Supply Schedule contractor for cause or if fraud is suspected.

(2) If the contractor claims that the failure was excusable, the ordering agency contracting officer shall consider the question of the failure to be a contract dispute (*see* 8.405–7). If the contractor does not claim that the failure was excusable, the ordering office may charge the terminated contractor with excess costs resulting from repurchase.

(3) Any repurchase shall be made at as low a price as reasonable considering the quality required by the Government, delivery requirement, and administrative expenses. Copies of all repurchase orders, except the copy furnished to the contractor or any other commercial concern, shall include the notation:

Repurchase against the account of _____ [insert contractor's name] under Order _____ [insert number] under Contract _____ [insert number].

(4) When excess costs are anticipated, the ordering office may withhold funds due the contractor as offset security. Ordering offices shall minimize excess costs to be charged against the contractor and collect or setoff any excess costs owed.

(5) If an ordering agency contracting officer is unable to collect excess repurchase costs, it shall notify the schedule contracting office after final payment to the repurchase contractor.

(i) The notice shall include the following information about the terminated order:

(A) Name and address of the contractor.

(B) Schedule, contract, and order number.

(C) National stock or special item number(s), and a brief description of the item(s).

(D) Cost of schedule items involved.

(E) Excess costs to be collected.

(F) Other pertinent data.

(ii) The notice shall also include the following information about the repurchase contract:

(A) Name and address of the contractor.

(B) Item repurchase cost.

(C) Repurchase order number and date of payment.

(D) Contract number, if any.

(E) Other pertinent data.

(c) Only the schedule contracting officer may terminate for cause any or all supplies or services covered by the schedule contract. If the schedule contracting officer has terminated any items covered by the schedule contract, no further orders may be placed for those items. Orders placed prior to termination for cause shall be fulfilled by the contractor unless terminated for the convenience of the Government by the ordering agency contracting officer.

8.405–6 Termination for the Government's convenience.

(a) Ordering agency contracting officer may terminate individual orders for the convenience of the Government. Terminations for convenience shall comply with FAR 12.403.

(b) Only the schedule contracting officer may terminate any or all supplies or services covered by the schedule contract for the convenience of the Government.

(c) Before terminating orders for convenience, the ordering agency contracting officer shall endeavor to enter into a ''no cost'' settlement agreement with the contractor.

8.405–7 [Amended]

11. Amend section 8.405–7 by removing from the introductory text of paragraph (a)(1) and paragraphs (a)(2) and (b) the word ''office'' and adding ''agency'' in its place.

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

12. Revise section 38.000 to read as follows:

38.000 Scope of part.

This part prescribes policies and procedures for contracting for supplies

and services under the Federal Supply Schedule program, which is directed and managed by the General Services Administration (*see* Subpart 8.4, Federal Supply Schedules, for additional information). The Department of Defense manages a similar system of schedule contracting for military items. The Department of Defense systems are not a part of the Federal Supply Schedule program.

38.101 [Amended]

13. Amend section 38.101 in the first sentence of paragraph (a) by removing ''commonly used'' and adding ''commercial'' in its place; in the second sentence by removing the parenthetical ''(including requirements contracts)''; and in the last sentence of paragraph (e) by removing ''(see 8.404)'' and adding ''(see 8.403)'' in its place.

[FR Doc. 03–9554 Filed 4–17–03; 8:45 am]

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Federal Register

Friday,
April 18, 2003

Part IV

Department of the Treasury

31 CFR Part 50

Terrorism Risk Insurance Program; Interim Final Rule and Proposed Rules

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AA98

Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of the Treasury (Treasury) is issuing this interim final rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (Act). The Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured losses from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. This interim final rule incorporates and clarifies statutory conditions for federal payment under the Program that require insurers to make certain disclosures to policyholders. The rule also incorporates and clarifies statutory requirements that insurers ''make available,'' in their commercial property and casualty insurance policies, terrorism risk coverage for insured losses under the Program. The interim final rule generally incorporates interim guidance previously issued by Treasury in this area, but with some modifications. This is the second in a series of regulations that Treasury will issue to implement the Act.

DATES: This interim final rule is effective April 18, 2003. Written comments on this interim final rule may be submitted on or before May 19, 2003.

ADDRESSES: Submit comments (if hard copy, preferably an original and two copies) to Office of Financial Institutions Policy, Attention: Terrorism Risk Insurance Program Public Comment Record, Room 3160 Annex, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted by electronic mail to: *triacomments@do.treas.gov.* All comments should be captioned with ''April 18, 2003 Interim Final Rule TRIA Comments.'' Please include your name, affiliation, address, e-mail address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622–2730, or Martha Ellett or Cynthia Reese, Attorney-Advisors, Office of the Assistant General Counsel (Banking & Finance), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

A. Terrorism Risk Insurance Act of 2002

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297, 116 Stat. 2322). The Act was effective immediately. Title I of the Act establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism as defined in the Act and certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program, including the prescription of regulations and procedures. The Program will sunset on December 31, 2005.

The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

The amount of federal payment for an insured loss resulting from an act of terrorism is to be determined based upon the insurance company deductibles and excess loss sharing with the Federal Government, as specified by the Act. Thus, the Program provides a federal reinsurance backstop for a temporary period of time. The Act also provides Treasury with authority to recoup federal payments made under the Program through policyholder surcharges, up to a maximum annual limit.

Each entity that meets the definition of ''insurer'' (well over 2000 firms) must participate in the Program. From the date of enactment of the Act through the last day of Program Year 2 (December 31, 2004), insurers under the Program must ''make available'' terrorism risk insurance in their commercial property and casualty insurance policies and the coverage must not differ materially from the terms, amounts and other coverage limitations applicable to commercial property and casualty losses arising from events other than acts of terrorism. The Act permits Treasury to extend the ''make available'' requirement into Program Year 3, based on an analysis of factors referenced in the study required by section 108(d)(1) of the Act, and not later than September 1, 2004.

An insurer's deductible increases each year of the Program, thereby reducing the Federal Government's involvement prior to sunset of the Program. An insurer's deductible is based on ''direct earned premiums'' over a statutory Transition Period (now expired) and the three Program Years. Once an insurer has met its deductible, the federal payments cover 90 percent of insured losses above the deductible, subject to an aggregate annual cap of $100 billion. The Act prohibits duplicative payments for insured losses that are covered under any other federal program.

As conditions for federal payment under the Program, insurers must provide clear and conspicuous disclosure to the policyholders of the premium charged for insured losses covered by the Program, and must submit a claim and certain certifications to Treasury. Treasury will be prescribing claims procedures at a later date.

The Act also contains specific provisions designed to manage litigation arising from or relating to a certified act of terrorism. Section 107 creates an exclusive federal cause of action, provides for claims consolidation in federal court and contains a prohibition on federal payments for punitive damages under the Program. This section also provides the United States with the right of subrogation with respect to any payment or claim paid by the United States under the Program. As part of the claims process, and as directed by the President, Treasury will be issuing regulations addressing Treasury's role in the approval of settlements.

B. Previously Issued Interim Guidance

To assist insurers, policyholders and other interested parties in complying with immediately applicable and time-sensitive requirements of the Act prior to the issuance of regulations, Treasury issued interim guidance in four separate notices. Treasury publicly released these interim guidance notices on its Program Web site, *http://www.treasury.gov/trip* and published each notice in the **Federal Register**.

Treasury released the first notice of Interim Guidance on December 3, 2002, within a week of the Act's enactment (Interim Guidance I). Interim Guidance I was published at 67 FR 76206 on

December 11, 2002, and addressed several issues pertaining to immediately applicable provisions of the Act, including statutory disclosure obligations of insurers as conditions for federal payment under the Program and the requirement that an insurer ''make available'' terrorism risk insurance. The disclosure guidance in Interim Guidance I references certain model forms of the National Association of Insurance Commissioners (NAIC) and provides a safe harbor for those insurers that make use of such forms prior to the issuance of regulations, but Interim Guidance I stated that these forms are not the exclusive means by which insurers could comply with the disclosure conditions prior to the issuance of regulations. Interim Guidance I also provided guidance concerning the ''direct earned premium'' on lines of property and casualty insurance to enable insurers to calculate their ''insurer deductibles'' and enable insurers to price and disclose premiums for terrorism risk insurance to policyholders within statutory time periods.

On December 18, 2002, Treasury issued a second notice of interim guidance. This interim guidance was published at 67 FR 78864 on December 26, 2002 (Interim Guidance II). Interim Guidance II addressed the statutory categories of ''insurers'' that are required to participate in the Program, including their ''affiliates;'' provided clarification on the scope of ''insured loss'' covered by the Program and provided additional guidance to enable eligible surplus line carriers listed on the Quarterly Listing of Alien Insurers of the NAIC or federally approved insurers to calculate their insurer deductibles for purposes of the Program.

On January 22, 2003, Treasury issued a third notice of interim guidance, published at 68 FR 4544 on January 29, 2003 (Interim Guidance III). Interim Guidance III further clarified certain disclosure and certification questions, issues for non-U.S. insurers, and the scope of the term ''insured loss'' under the Act.

On March 25, 2003, Treasury issued a fourth interim guidance published at 68 FR 15039 on March 27, 2003 (Interim Guidance IV). Interim Guidance IV provided insurers a procedure by which they could seek to rebut a presumption of control established in Treasury's first set of interim final regulations. See Previously Issued Regulations in section C below and Treasury's Web site at *http://www.treasury.gov/trip.*

In issuing each notice of Interim Guidance, Treasury stated that the Interim Guidance may be relied upon by insurers until superseded by regulations or a subsequent notice. Treasury provided safe harbors for actions by those insurers taken in accordance with, and in reliance on, the interim guidance for the time period prior to the issuance of regulations.

C. Previously Issued Regulations

Treasury published the first regulation implementing the Act on February 28, 2003 (68 FR 9804) as an interim final rule together with a proposed rule. Both request comments by March 31, 2003. The first regulation, which is subpart A of new part 50 in title 31 of the CFR, covers the purpose and scope of the Program, key definitions, and certain general provisions.

II. Analysis of the Interim Final Rule

This interim final rule incorporates and clarifies statutory conditions for federal payment that require insurers to make certain disclosures to policyholders within specified time limits. The interim final rule also incorporates and clarifies statutory requirements that insurers must ''make available'' in all of their commercial property and casualty insurance policies, coverage for insured losses resulting from an act of terrorism as defined by the Act. The Act requires insurers to make such terrorism risk coverage available at terms, amounts, and other coverage limitations that do not differ materially from those applicable to losses arising from events other than acts of terrorism. The interim final rule generally incorporates interim guidance previously issued by Treasury, except as described in this preamble. In accordance with section 104(c) of the Act, Treasury has consulted with the National Association of Insurance Commissioners on this rule. Treasury is also issuing a companion proposed rule with request for comment.

Although Treasury is issuing these requirements in as an interim final rule, we are soliciting comments on all aspects of the interim final rule from all interested parties. Published elsewhere in this separate part of this issue of the **Federal Register** is a notice of proposed rulemaking proposing to adopt the provisions of this interim final rule as a final rule.

A. Disclosures

One of the conditions for federal payments under section 103(b) of the Act is that the insurer provide ''clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the federal share of compensation for insured losses under the Program.'' The Act provides that in the case of any policy that is issued before the date of enactment of the Act (November 26, 2002), this disclosure must occur not later than 90 days thereafter (February 24, 2003). In the case of any policy that is issued within 90 days of the date of enactment, the disclosure must be made ''at the time of offer, purchase, and renewal of the policy.'' In the case of any policy that is issued more than 90 days after the date of enactment, disclosure must be made ''on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy.''

The disclosure requirements are key provisions of the Act, both in terms of being a condition for payment and a mechanism to effectuate the other purposes of the Act. The Conference Report accompanying the Act states, in part:

> Before receiving Federal assistance under this Act, an insurer must certify its claim for payment of insured losses, that a policyholder (or person acting on the policyholder's behalf) has filed a claim for such loss, and the insurer's compliance with the Act. The Secretary may not reimburse an insurer for such losses unless the insurer has provided clear and conspicuous disclosure to the policyholder of the premium charged for terrorism coverage and the Federal share of compensation. * * *
> The Conferees intend this disclosure to enhance the competitiveness of the marketplace by better enabling consumers to comparison shop for terrorism insurance coverage, and to make policyholders better aware that the Federal government will be sharing the costs of such coverage with the insurers, thereby reducing the insurers's (sic) exposure. * * * H.R. Conf. Rep. No. 107–779 (2002).

Section 50.12 of the interim final rule deals generally with disclosure requirements. Section 50.12(a) contains a new provision stating that whether a disclosure is clear and conspicuous depends on the totality of the facts and circumstances. Treasury is not specifying an exclusive form or means of satisfying the statutory disclosure requirements, and Treasury does not intend to adopt a practice of prescribing particular language or forms. However, in order to provide guidance to insurers, Treasury in previous interim guidance has deemed certain NAIC model forms to be acceptable in terms of satisfying the disclosure requirement and has stated that insurers may modify the forms to meet individual circumstances, or use other forms. This interim guidance has been incorporated into the interim final rule and provides a safe harbor (see section 50.17 of the interim final rule) for policies that were in force

on the date of enactment or were issued within 90 days of enactment. For policies issued more than 90 days after enactment, section 50.17 (c) provides that insurers may continue to use certain NAIC model forms if appropriate or develop other disclosures that meet the requirements of sections 50.10(a) and 50.14.

Treasury stated in Interim Guidance II that an insurer may communicate the premium for insured losses in a manner that is consistent with standard business practice, which in some cases may be as a percentage of the overall policy premium. This interim final rule incorporates this guidance and also contains a provision in section 50.12(b) stating that an insurer may not describe the premium in a manner that is misleading in the context of the Program, such as by characterizing the premium as a ''surcharge.'' It is inappropriate to use the term ''surcharge'' in the disclosures, because that term is used in the Act and the Program only in connection with the statutory recoupment procedure that requires certain surcharges to repay the federal financial assistance. Pursuant to the Act's recoupment provisions, any amount established by the Secretary as a terrorism loss risk-spreading premium is to be imposed as a policyholder premium ''surcharge'' on property and casualty insurance policies in force at that time. See sections 103(e)(7) and (8) of the Act.

In Interim Guidance III, Treasury indicated that the disclosures can be communicated by the use of channels, methods and forms of communication normally used to communicate similar policyholder information. This interim final rule incorporates that principle in section 50.12(c). In some contexts there may be a question about who is the ''policyholder'' with whom the insurer normally communicates. For example, a surety insurance company may normally deal with purchasers of surety bonds and communicate to them policyholder information similar to disclosures, although the bonds run in favor of other parties who would be paid in the event of loss. In such cases where there is some ambiguity as to who the policyholder is, insurance companies should rely on normal business practices in determining what parties should be provided disclosures.

Section 50.12(d) of the interim final rule reiterates guidance previously issued (see Interim Guidance I) to the effect that an insurer may communicate disclosures through an insurance broker or other intermediary acting as agent for the insurer if the insurer normally communicates with a policyholder in this fashion. The insurer remains responsible for ensuring that the disclosures are provided to policyholders.

Section 50.12(e) of the interim final rule states that an insurer may demonstrate that it has complied with the disclosure requirement through use of appropriate systems and normal business practices that demonstrate a practice of compliance. As stated in Interim Guidance II, compliance with the disclosure provisions may be evidenced in a variety of ways, including a proof of mailing process and other methods consistent with normal forms of communication with policyholders. Treasury has taken this approach to enable insurers to utilize their normal business practices and risk management procedures as much as possible to minimize the administrative burden to insurers in implementing the Act.

In Interim Guidance III, Treasury stated that it expected to propose regulations that would require an insurer to certify that it complied with the required disclosure(s) to the policyholder on the underlying claim or claims submitted by the insurer for federal payment under the Program. This provision does not in any way impact the calculation of an insurer's direct earned premium as specified in section 50.5(d) (see the first interim final rule, 68 FR 9804), or the statutory recoupment provisions. Section 50.12(f) of this interim final rule clarifies that an insurer will only be required to certify with respect to those policies that form the basis for its claims, *i.e.*, not all other policies that are written by an insurance company. ''Basis'' means all policies used by an insurer to calculate its total insured loss.

Sections 50.13 and 50.14 of the interim final rule incorporate guidance previously issued (see Interim Guidance III) on what constitutes ''offer, purchase, and renewal'' and a ''separate line item'' for purposes of this provision of the Act. An insurer is deemed to be in compliance with the requirement of providing disclosure at the time of ''offer, purchase, and renewal'' of the policy if the insurer makes the disclosure when the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder, and makes clear and conspicuous reference back to that disclosure, as well as the final terms of terrorism insurance coverage, when the transaction is completed. An insurer is deemed to be in compliance with the ''separate line item'' requirement if the insurer makes the disclosure: on the declarations page of the policy; elsewhere within the policy itself; or in any rider or endorsement that is made a part of the policy. Taken together, sections 50.13 and 50.14 allow for an insurer to make the required disclosure when the insurer first formally offers to provide coverage, and then to refer back to that disclosure using any of the options that qualify a separate line item.

Section 50.17 incorporates the safe harbors provided in interim guidance for certain NAIC model forms. These forms may be found on the NAIC Internet Web site at *http://www.naic.org/pressroom/releases/disclose_one_final.pdf* and *http://www.naic.org/pressroom/releases/disclose_two_final.pdf*. These forms are also accessible from the Treasury Web site at *http://www.treasury.gov/trip*. As noted above, these forms are only examples and are not the exclusive means for an insurer to comply with the disclosure requirements.

Section 50.18 of the interim final rule reiterates the disclosure requirements in section 105(c) of the Act for reinstatement of any preexisting terrorism exclusion. Section 50.19 is merely a cross-reference to the regulations in subpart D, which will be issued separately and will cover State residual market insurance entities and State workers' compensation funds.

The Act specifies certain time limits for disclosures to policyholders. Treasury will be evaluating whether an insurer has materially complied with these and other conditions for payment with respect to any claim. In so doing, Treasury expects to consider applicable facts and circumstances, including good faith efforts of the insurer to meet applicable time limits after enactment of the Act, and during the duration of the Program.

B. Mandatory Availability

Section 103(c) of the Act requires each entity that meets the definition of an insurer under the Act to (1) make available, in all of its property and casualty insurance policies, coverage for insured losses; and (2) make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. These requirements apply from the date of enactment (November 26, 2002) through the last day of Program Year 2 (December 31, 2004). The Secretary is required to determine, not later than September 1, 2004, based on the factors in section 108(d)(1) of the Act, whether the make available requirements should be extended through Program Year 3

(December 31, 2005). The Conference Report accompanying the Act states, with respect to this provision, that ''the Secretary has discretion to extend this requirement to the third year of the Program, to preserve this important option for policyholders.'' H.R. Conf. Rep. No. 107–779 (2002).

Section 50.20 of the interim final rule incorporates the general statutory requirements as described above.

Section 50.21 of the interim final rule covers general matters of applicable time periods, initial offers of coverage versus subsequent negotiations, and how an insurer may demonstrate compliance. Section 50.21(a) makes clear that the make available requirements apply to policies in existence on November 26, 2002, new policies issued, and renewals of existing policies through the end of Program Year 2 (unless extended by the Secretary). The make available requirements are not one-time requirements. For example, if an insurer has satisfied the make available requirements in Program Year 1 in its offer to a policyholder, but the coverage offered is declined, the insurer must still satisfy the make available requirements again when the policy is renewed in Program Year 2.

Section 50.21(a) also states, consistent with Interim Guidance I, that the make available requirements apply at the time an insurer makes the initial offer of coverage, as distinguished from changes negotiated by the insurer thereafter as part of the process of agreeing on a contract of insurance. Section 50.21(b)(1) addresses a situation in which an insurer makes an initial bona fide offer of terrorism risk coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism; the policyholder then declines the offer, and the insurer subsequently negotiates terrorism risk coverage of the policyholder for insured losses at a lower amount of terrorism risk coverage than initially offered. In such a situation, under the interim final rule, the make available requirements would have been satisfied by the initial offer, and therefore an offer of a lower amount of terrorism risk coverage is deemed permissible, if allowed under any applicable State law. Although a subsequent lower offer as described is permissible, neither the Act nor the Program require an insurer to offer partial coverage if the policyholder declines full coverage in an initial offer. (See the discussion below of section 50.24, which deals with the applicability of State law requirements.)

Section 50.21(c) addresses the demonstration of compliance by an insurer with the make available requirement. Treasury has audit and investigative authority under the Act and insurers should be prepared to demonstrate compliance with the make available requirements. Treasury is not prescribing any new recordkeeping requirement. With regard to an insurer's current insurance policies, records related to the make available requirements are likely to be included and retained as part of standard policy documents in the normal course of business. In this regard, however, if an insurer makes an offer of insurance but no contract of insurance is purchased or renewed (*i.e.* no insurance contract is finalized), the insurer may demonstrate that it has satisfied the make available requirements through its routine adherence to normal risk management systems (*e.g.*, company policies, use of internal controls and audits) and normal business practices (*e.g.* sample forms routinely used to solicit business) during the relevant time period that evidence its practice of compliance.

Section 50.23 of the interim final rule addresses the language ''terms, amounts, and coverage limitations'' in the make available requirements. Sections 50.23(a) and (b) of the interim final rule incorporate guidance previously issued by Treasury (Interim Guidance I). Section 50.23(a) states that an insurer must offer coverage for insured losses resulting from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations (including deductibles) applicable to losses from other perils. ''Terms'' excludes price for purposes of this requirement. This means the requirement to offer coverage for insured losses that does not differ materially from the terms, amounts and other coverage limitations applicable to losses arising from events other than acts of terrorism does not apply to the price of the coverage. As noted in Interim Guidance I, however, Treasury will be monitoring the pricing and availability of terrorism risk insurance coverage as part of the Act's requirements that Treasury study the effectiveness of the Program (section 108(d)(1)).

Section 50.23(b) provides that if an insurer does not cover all types of risks, then it is not required to cover the excluded risks in satisfying the requirement to make available coverage for losses resulting from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. If an insurer does not cover all types of risks, either because the insurer is outside of direct State regulatory oversight, or because a State permits certain exclusions for certain types of losses, such as nuclear, biological, or chemical events, then the insurer is not required to make such coverage available.

Section 50.24 of the interim final rule addresses the interrelationship of federal and State law requirements and confirms the continued applicability of State law requirements, consistent with Interim Guidance I. (See also the discussion of section 50.21(b), above.) After satisfying the requirement to make available coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, if coverage is rejected, an insurer may then offer coverage that is on different terms, amounts, or coverage limitations, as long as such an offer does not violate any applicable State law requirements. For example, if an insurer subject to State regulation first satisfies the requirement to make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, and the State has a requirement that an insurer offer full coverage without any exclusion, then the requirement would continue to apply and the insurer may not subsequently offer less than full coverage or coverage with exclusions. If such an insurer first satisfies the make available requirement but the State permits certain exclusions or allows for other limitations (or an insurance policy is not governed by State law requirements), then the insurer may subsequently offer limited coverage or coverage with exclusions.

III. Procedural Requirements

The Act established a Program to provide for loss sharing payments by the Federal Government for insured losses resulting from certified acts of terrorism. The Act became effective immediately upon the date of enactment (November 26, 2002). Preemptions of terrorism risk exclusions in policies, mandatory participation provisions, disclosure and other requirements and conditions for federal payment contained in the Act applied immediately to those entities that come within the Act's definition of ''insurer.''

The disclosure requirements are statutory conditions for federal payment under the Program. The disclosure

requirements were effective immediately upon enactment and remain ongoing requirements that apply to new and renewed policies throughout the life of the Program. In the event of an act of terrorism resulting in insured losses under the Program, insurers must certify, and Treasury must ascertain, that these disclosure requirements have been met before federal payment is made. Similarly, the make available requirements are critical elements of the Act. These requirements were effective immediately upon enactment and applied to policies in effect at that time. They will continue to apply to new and renewed policies through the end of 2004 (and if the requirements are extended by the Secretary, through 2005). Given the significance of the disclosure and make available requirements to policyholders and insurers, there is an urgent need to issue immediately effective regulations that incorporate and clarify interim guidance with regard to these requirements.

For the above reasons, pursuant to 5 U.S.C. 553(b)(B), Treasury has determined that it would be contrary to the public interest to delay the publication of this rule in final form during the pendency of an opportunity for public comment. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for the interim final rule to become effective immediately upon publication. While this regulation is effective immediately upon publication, Treasury is seeking public comment on the regulation and will consider all comments in developing a final rule.

This interim final rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under the terms of Executive Order 12866.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty policyholders and spreading the risk of insured loss resulting from an act of terrorism.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

■ For the reasons stated above, 31 CFR part 50 is amended as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 1. The authority citation for 31 CFR part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322 (15 U.S.C. 6701 note).

■ 2. Subpart B of 31 CFR part 50 is amended by adding §§ 50.10 through 50.14 and 50.17 through 50.19 to read as follows:

§ 50.10 General disclosure requirements.

(a) *All policies.* As a condition for federal payments under section 103(b) of the Act, the Act requires that an insurer provide clear and conspicuous disclosure to the policyholder of:

(1) The premium charged for insured losses covered by the Program; and

(2) The federal share of compensation for insured losses under the Program.

(b) *Policies in force on the date of enactment.* For policies issued before November 26, 2002, the disclosure required by the Act must be provided within 90 days of November 26, 2002 (no later than February 24, 2003).

(c) *Policies issued within 90 days of the date of enactment.* For policies issued within the 90-day period beginning on November 26, 2002 through February 24, 2003, the disclosure required by the Act must be provided at the time of offer, purchase, and renewal of the policy.

(d) *Policies issued more than 90 days after the date of enactment.* For policies issued on or after February 25, 2003, the disclosure required by the Act must be made on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy.

§ 50.11 Definition.

Except as provided in § 50.18, for purposes of this subpart the term ''disclosure'' or ''disclosures'' refers to the disclosures described in section 103(b)(2) of the Act and § 50.10.

§ 50.12 Clear and conspicuous disclosure.

(a) *General.* Whether a disclosure is clear and conspicuous depends on the totality of the facts and circumstances of the disclosure. See § 50.17 for model forms.

(b) *Description of premium.* An insurer may describe the premium charged for insured losses covered by the Program as a portion or percentage of an annual premium, if consistent with standard business practice. An insurer may not describe the premium in a manner that is misleading in the context of the Program, such as by characterizing the premium as a ''surcharge.''

(c) *Method of disclosure.* An insurer may provide disclosures using normal business practices, including forms and methods of communication used to communicate similar policyholder information to policyholders.

(d) *Use of agent.* If an insurer normally communicates with a policyholder through an insurance broker or other intermediary acting as agent for the insurer, an insurer may provide disclosures through such an agent. The insurer remains responsible for ensuring that disclosures are provided to policyholders in accordance with the Act.

(e) *Demonstration of compliance.* An insurer may demonstrate that it has satisfied the requirement to provide clear and conspicuous disclosure as described in § 50.10 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

(f) *Certification of compliance.* An insurer must certify that it has complied with the requirement to provide disclosure to the policyholder on all policies that form the basis for any claim that is submitted by an insurer for federal payment under the Program.

§ 50.13 Offer, purchase, and renewal.

An insurer is deemed to be in compliance with the requirement of providing disclosure ''at the time of offer, purchase, and renewal of the policy'' under § 50.10(c) and (d) if the insurer:

(a) Makes the disclosure no later than the time the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder; and

(b) Makes clear and conspicuous reference back to that disclosure, as well as the final terms of terrorism insurance coverage, at the time the transaction is completed.

§ 50.14 Separate line item.

An insurer is deemed to be in compliance with the requirement of providing disclosure on a ''separate line item in the policy'' under § 50.10(d) if the insurer makes the disclosure:

(a) On the declarations page of the policy;

(b) Elsewhere within the policy itself; or

(c) In any rider or endorsement that is made a part of the policy.

§ 50.17 Use of model forms.

(a) *Policies in force on the date of enactment.* (1) An insurer that is required to make the disclosure under § 50.10(b) and that makes no change in the existing premium, is deemed to be in compliance with the disclosure

requirement if it uses NAIC Model Disclosure Form No. 2.

(2) An insurer that is required to make the disclosure under § 50.10(b) and that makes a change in the existing premium, is deemed to be in compliance with the disclosure requirement if it uses NAIC Model Disclosure Form No. 1. Such an insurer may also use the same NAIC Model Disclosure Form No. 1 to comply with the disclosure requirement of section 105(c) of the Act. *See* § 50.18.

(b) *Policies issued within 90 days of the date of enactment.* An insurer that is required to make the disclosure under § 50.10(c) is deemed to be in compliance with the disclosure requirement if it uses either NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2, as long as the form used is modified as appropriate for the particular policy.

(c) *Policies issued more than 90 days after the date of enactment.* An insurer that is required to make the disclosure under § 50.10(d) may continue to use NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2 if appropriate, or other disclosures that meet the requirements of §§ 50.10(a) and 50.14 may be developed.

(d) *Not exclusive means of compliance.* An insurer is not required to use NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2 to satisfy the disclosure requirement. An insurer may use other means to comply with the disclosure requirement, as long as the disclosure comports with the requirements of the Act.

(e) *Definitions.* For purposes of this section, references to NAIC Model Disclosure Form No. 1 and NAIC Model Disclosure Form No. 2 refer to such forms as were in existence on April 18, 2003. These forms may be found on the Treasury Web site at *http://www.treasury.gov/trip.*

§ 50.18 Disclosure required by reinstatement provision.

(a) *Nullification of terrorism exclusion.* Any terrorism exclusion in a contract for property and casualty insurance that was in force on November 26, 2002, is void to the extent it excludes losses that would otherwise be insured losses.

(b) *Reinstatement of terrorism exclusion.* Notwithstanding paragraph (a) of this section, an insurer may reinstate a preexisting provision in a contract for property and casualty insurance that was in force on November 26, 2002, and that excludes coverage for an act of terrorism only if:

(1) The insurer has received a written statement from the insured that affirmatively authorizes such reinstatement; or

(2) The insured provided notice at least 30 days before any such reinstatement of the increased premium for such terrorism coverage and the rights of the insured with respect to such coverage, including the date upon which the exclusion would be reinstated if no payment is received, and the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage.

§ 50.19 Disclosure by State residual market insurance entities and State workers' compensation funds [Reserved]

■ 3. Subpart C of 31 CFR part 50 is amended by adding §§ 50.20, 50.21, 50.23 and 50.24 to read as follows:

§ 50.20 General mandatory availability requirements.

(a) *Transition Period and Program Years 1 and 2—period ending December 31, 2004.* Under section 103(c) of the Act (unless the time is extended by the Secretary as provided in that section) during the period beginning on November 26, 2002 and ending on December 31, 2004 (the last day of Program Year 2), an insurer must:

(1) Make available, in all of its property and casualty insurance policies, coverage for insured losses; and

(2) Make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

(b) *Program Year 3—calendar year 2005.* [Reserved]

§ 50.21 Make available.

(a) *General.* The requirement to make available coverage as provided in § 50.20 applies to policies in existence on November 26, 2002, new policies issued and renewals of existing policies during the period beginning on November 26, 2002 and ending on December 31, 2004 (the last day of Program Year 2), and if the requirement is extended by the Secretary, to new policies issued and renewals of existing policies in Program Year 3 (calendar year 2005). The requirement applies at the time an insurer makes the initial offer of coverage.

(b) *Changes negotiated subsequent to initial offer.* If an insurer satisfies the requirement to ''make available'' coverage as described in § 50.20 by first making an offer with coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, which the policyholder declines, the insurer may negotiate with the policyholder an option of partial coverage for insured losses at a lower amount of coverage if permitted by any applicable State law. An insurer is not required by the Act to offer partial coverage if the policyholder declines full coverage. See § 50.24.

(c) *Demonstration of compliance.* If an insurer makes an offer of insurance but no contract of insurance is concluded, the insurer may demonstrate that it has satisfied the requirement to make available coverage as described in § 50.20 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

§ 50.23 No material difference from other coverage.

(a) *Terms, amounts, and other coverage limitations.* As provided in § 50.20(a)(2), an insurer must offer coverage for insured losses resulting from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations (including deductibles) applicable to losses from other perils. For purposes of this requirement, ''terms'' excludes price.

(b) *Limitations on types of risk.* If an insurer does not cover all types of risks, then it is not required to cover the excluded risks in satisfying the requirement to make available coverage for losses resulting from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. For example, if an insurer does not cover all types of risks, either because the insurer is outside of direct State regulatory oversight, or because a State permits certain exclusions for certain types of losses, such as nuclear, biological, or chemical events, then the insurer is not required to make such coverage available.

§ 50.24 Applicability of State law requirements.

(a) *General.* After satisfying the requirement to make available coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, if coverage is rejected an insurer may then offer coverage that is on different terms, amounts, or

coverage limitations, as long as such an offer does not violate any applicable State law requirements.

(b) *Examples.* (1) If an insurer subject to State regulation first makes available coverage in accordance with § 50.20 and the State has a requirement that an insurer offer full coverage without any exclusion, then the requirement would continue to apply and the insurer may not subsequently offer less than full coverage or coverage with exclusions.

(2) If an insurer subject to State regulation first makes available coverage in accordance with § 50.20 and the State permits certain exclusions or allows for other limitations, or an insurance policy is not governed by State law requirements, then the insurer may subsequently offer limited coverage or coverage with exclusions.

Dated: April 11, 2003.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 03–9611 Filed 4–17–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AA98

Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to interim final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this proposed rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (the Act). That Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured loss from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. This rule incorporates and clarifies statutory conditions for federal payment under the Program that require insurers to make certain disclosures to policyholders. The rule also incorporates and clarifies statutory requirements that insurers ''make available,'' in their commercial property and casualty insurance policies, terrorism risk coverage for insured losses under the Program. The rule generally incorporates interim guidance previously issued by Treasury in this area, but with some modifications. This proposed rule, together with the interim final rule published elsewhere in this separate part of the **Federal Register**, are the second in a series of regulations Treasury will issue to implement the Act.

DATES: Written comments may be submitted on or before May 19, 2003.

ADDRESSES: Submit comments (if hard copy, preferably an original and two copies) to Office of Financial Institutions Policy, Attention: Terrorism Risk Insurance Program Public Comment Record, Room 3160 Annex, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted by electronic mail to: *triacomments@do.treas.gov.* All comments should be captioned with ''April 18, 2003 TRIA Interim Final Rule Comments.'' Please include your name, affiliation, address, e-mail address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622–2730, or Martha Ellett or Cynthia Reese, Attorney-Advisors, Office of the Assistant General Counsel (Banking & Finance), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

Published elsewhere in this separate part of the **Federal Register** is an interim final rule adding Subparts B and C to 31 CFR part 50, which comprises Treasury's regulations implementing the Act. The preamble to the interim final rule explains these provisions of the proposed rule in detail, and the text of the interim final rule serves as the text for this proposed rule.

II. Procedural Requirements

This proposed rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under the terms of Executive Order 12866.

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Act requires all licensed or admitted insurers to participate in the Program. This includes all insurers regardless of size or sophistication. The Act also defines property and casualty insurance to mean commercial lines without any reference to the size or scope of the commercial entity. The disclosure and make available requirements are required by the Act. The proposed rule allows all insurers, whether large or small, to use existing systems and business practices to demonstrate compliance. Accordingly, any economic impact associated with the proposed rule flows from the Act and not the proposed rule. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty insurance policyholders and spreading the risk of insured loss resulting from an act of terrorism.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

For the reasons set forth above, the Department of the Treasury proposes to adopt as a final rule the interim final rule adding subparts B and C to 31 CFR part 50, as follows:

The text of proposed subparts B and C to 31 CFR part 50 is the same as the text of subparts B and C to 31 CFR part 50 in the interim final rule published elsewhere in this separate part of this issue of the **Federal Register**.

Dated: April 11, 2003.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 03–9612 Filed 4–17–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AA99

Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (Treasury) is issuing this proposed rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (Act). The Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured losses from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. This notice of proposed rulemaking would apply provisions of the Act to State residual market insurance entities and State workers' compensation funds which are insurers under the Program. This is the third in a series of regulations that Treasury will issue to implement the Act.

DATES: Written comments may be submitted on or before May 19, 2003.

ADDRESSES: Submit comments (if hard copy, preferably an original and two copies) to Office of Financial Institutions Policy, Attention: Terrorism Risk Insurance Program Public Comment Record, Room 3160 Annex, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted by electronic mail to: *triacomments@do.treas.gov.* All comments should be captioned with ''April 18, 2003 NPRM TRIA Comments.'' Please include your name, affiliation, address, e-mail address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library.

To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622–2730, or Martha Ellett or Cynthia Reese, Attorney-Advisors, Office of the Assistant General Counsel (Banking & Finance), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

A. Terrorism Risk Insurance Act of 2002

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act of 2002 (Public Law 107–297, 116 Stat. 2322). The Act was effective immediately. Title I of the Act establishes a temporary Federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism as defined in the Act and certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program, including the prescription of regulations and procedures. The Program will sunset on December 31, 2005.

The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

The amount of Federal payment for an insured loss resulting from an act of terrorism is to be determined based upon the insurance company deductibles and excess loss sharing with the Federal Government, as specified by the Act. Thus, the Program provides a Federal reinsurance backstop for a temporary period of time. The Act also provides Treasury with authority to recoup Federal payments made under the Program through policyholder surcharges, up to a maximum annual limit.

Each entity that meets the definition of ''insurer'' (well over 2000 firms) must participate in the Program. The Act includes State residual market insurance entities and State workers compensation funds in the definition of insurer but requires Treasury to issue regulations as soon as practicable to apply the provisions of the Act to these insurers.

From the date of enactment of the Act through the last day of Program Year 2 (December 31, 2004), insurers under the Program must ''make available'' terrorism risk insurance in their commercial property and casualty insurance policies and the coverage must not differ materially from the terms, amounts and other coverage limitations applicable to commercial property and casualty losses arising from events other than acts of terrorism. The Act permits Treasury to extend the ''make available'' requirement into Program Year 3, based on an analysis of factors referenced in the study required by section 108(d)(1) of the Act, and not later than September 1, 2004.

An insurer's deductible increases each year of the Program, thereby reducing the Federal Government's involvement prior to sunset of the Program. An insurer's deductible is based on ''direct earned premiums'' over a statutory Transition Period (now expired) and the three Program Years. Once an insurer has met its deductible, the Federal payments cover 90 percent of insured losses above the deductible, subject to an aggregate annual cap of $100 billion. The Act prohibits duplicative payments for insured losses that are covered under any other Federal program.

As conditions for Federal payment under the Program, insurers must provide clear and conspicuous disclosure to the policyholders of the premium charged for insured losses covered by the Program, and must submit a claim and certain certifications to Treasury. Treasury will be prescribing claims procedures at a later date.

The Act also contains specific provisions designed to manage litigation arising from or relating to a certified act of terrorism. Section 107 creates an exclusive Federal cause of action, provides for claims consolidation in Federal court and contains a prohibition on Federal payments for punitive damages under the Program. This section also provides the United States with the right of subrogation with respect to any payment or claim paid by the United States under the Program. As part of the claims process, and as directed by the President, Treasury will be issuing regulations addressing Treasury's role in the approval of settlements.

B. Previously Issued Interim Guidance

To assist insurers, policyholders and other interested parties in complying with immediately applicable and time-sensitive requirements of the Act prior to the issuance of regulations, Treasury issued interim guidance in four separate notices. Treasury publicly released these interim guidance notices on its Program Web site, *http://www.treasury.gov/trip* and published each notice in the **Federal Register**.

Treasury released the first notice of Interim Guidance on December 3, 2002, within a week of the Act's enactment (Interim Guidance I). Interim Guidance I was published at 67 FR 76206 on December 11, 2002, and addressed several issues pertaining to immediately applicable provisions of the Act, including statutory disclosure obligations of insurers as conditions for Federal payment under the Program and the requirement that an insurer ''make available'' terrorism risk insurance. The disclosure guidance in Interim Guidance I references certain model forms of the National Association of Insurance Commissioners (NAIC) and provides a safe harbor for those insurers that make use of such forms prior to the issuance of regulations, but Interim Guidance I stated that these forms are not the exclusive means by which insurers could comply with the disclosure conditions prior to the issuance of regulations. Interim Guidance I also provided guidance concerning the ''direct earned premium'' on lines of property and casualty insurance to enable insurers to calculate their ''insurer deductibles'' and enable insurers to price and disclose premiums for terrorism risk insurance to policyholders within statutory time periods.

On December 18, 2002, Treasury issued a second notice of interim guidance. This interim guidance was published at 67 FR 78864 on December 26, 2002 (Interim Guidance II). Interim Guidance II addressed the statutory categories of ''insurers'' that are required to participate in the Program, including their ''affiliates''; provided clarification on the scope of ''insured loss'' covered by the Program and provided additional guidance to enable eligible surplus line carriers listed on the Quarterly Listing of Alien Insurers of the NAIC or Federally approved insurers to calculate their insurer deductibles for purposes of the Program.

On January 22, 2003, Treasury issued a third notice of interim guidance, published at 68 FR 4544 on January 29, 2003 (Interim Guidance III). Interim Guidance III further clarified certain disclosure and certification questions, issues for non-U.S. insurers, and the scope of the term ''insured loss'' under the Act.

On March 25, 2003 Treasury issued a fourth interim guidance published at 68 FR 15039 on March 27, 2003 (Interim

Guidance IV). Interim Guidance IV provided insurers a procedure by which they could seek to rebut a presumption of control established in Treasury's first set of interim final regulations. See Previously Issued Regulations in section C below and Treasury's Web site at *http://www.treasury.gov/trip*.

In issuing each notice of Interim Guidance, Treasury stated that the Interim Guidance may be relied upon by insurers until superseded by regulations or a subsequent notice. Treasury provided safe harbors for actions by those insurers taken in accordance with, and in reliance on, the interim guidance for the time period prior to the issuance of regulations.

C. Previously Issued Regulations

Treasury published the first regulation implementing the Act on February 28, 2003 (68 FR 9804) as an interim final rule together with a proposed rule. Both request comments by March 31, 2003. The first regulation, which is subpart A of new part 50 in Title 31 of the CFR, covers the purpose and scope of the Program, key definitions, and certain general provisions.

In addition, Treasury has published an interim final rule on requirements concerning disclosures that insurers must make to policyholders as a condition for federal payment under the Act, and requirements that insurers make available, in their commercial property and casualty insurance policies, terrorism risk coverage for insured losses under the Program. (*See* Subparts B and C of 31 CFR Part 50).

II. The Proposed Rule

Section 102(6) of the Act includes State residual market insurance entities and State workers' compensation funds as insurers that are required to participate in the Program. Section 103(d) of the Act requires Treasury to ''issue regulations, as soon as practicable after the date of enactment of this Act, that apply the provisions of this title [Title I] to State residual market insurance entities and State workers' compensation funds.'' Pursuant to this statutory directive, Treasury is issuing this notice of proposed rulemaking.

A. Mandatory Participation as an ''Insurer''

State residual market insurance entities and State workers' compensation funds have been established to provide insurance coverage where private insurance companies are unwilling or unable to provide coverage. Private insurance companies may be unwilling or unable to provide coverage because of the policyholder's risk profile or because the economics of a particular transaction are not consistent with the types of risk the insurer is willing or able to underwrite. In some cases a residual market entity shares the risks of its underlying policies with insurance companies that provide certain types of coverage within the state, and in other cases a residual market entity operates on a stand alone basis.

All entities that meet the definition of ''insurer'' in section 102(6)(A) and (B) and, if prescribed by Treasury, criteria in 102(6)(C), of the Act are required to participate in the Program. Section 102(6)(A)(iv) includes State residual market insurance entities and State workers' compensation funds in the definition of insurer for purposes of the Program. Treasury considers the term State residual market insurance entity to encompass all such residual market entities that arrange for or provide commercial property and casualty insurance coverage. This includes residual market entities associated with the provision of commercial property, liability, workers' compensation, and automobile (including State automobile funds) coverage. Section 102(6)(B) provides an exception to the direct earned premium requirement for State residual market entities and State workers' compensation funds. Treasury has issued no regulatory criteria under section 102(6)(C). Therefore, State residual market insurance entities and State workers' compensation funds are insurers covered by the Program and required to participate in the Program. Section 103(d) of the Act requires Treasury to issue regulations as soon as practicable to apply the provisions of the Act to these types of insurers.

Following consultation with the NAIC, Treasury identified a group of entities that falls within the category of State residual market insurance entities and State workers compensation funds. Treasury included this list as part of its Interim Guidance II (67 FR 78864). In that notice of interim guidance, Treasury also requested that any State residual market insurance entity or State workers' compensation fund, not included on the list, notify Treasury. In response, Treasury received additional information and a number of suggestions concerning the State residual market entities and State workers' compensation funds on the list. After consideration of this additional information and further consultation with the NAIC, Treasury has updated and expanded the initial list in the interim guidance of State residual market insurance entities and State workers' compensation funds. This revised list will be updated as necessary, and publicly available at *http://www.treasury.gov/trip*.

B. Treatment or Allocation of Premium

Section 103(d)(2) of the Act divides State residual market insurance entities into two broad classes for purposes of their treatment as insurers under the Program: (1) Entities that *do not* share profits and losses with private sector insurance companies; and (2) entities that *do* share profits and losses with private sector insurance companies. Section 103(d)(2)(A) provides that ''a State residual market insurance entity that does not share its profits and losses with private sector insurers shall be treated as a separate insurer.'' For State residual market insurance entities that fall under section 103(d)(2)(A) or for State workers' compensation funds Treasury is proposing that these entities follow the regulatory guidelines set forth in 31 CFR 50.5(d)(1) or 50.5(d)(2) for the purposes of calculating the appropriate measure of direct earned premium.

Section 103(d)(2)(B) of the Act provides that ''a State residual market insurance entity that shares its profits and losses with private sector insurers shall not be treated as a separate insurer, and shall report to each private sector insurance participant its share of the insured losses of the entity, which shall be included in each private sector insurer's insured losses.'' Section 103(d)(3) further provides that ''any insurer that participates in sharing profits and losses of a State residual market insurance entity shall include in its calculations of premiums any premiums distributed to the insurer by the State residual market insurance entity.'' A significant number of State residual market entities share their profits and losses with private sector insurance companies, including entities that arrange for commercial automobile, property, and workers' compensation coverages. In addition, some State residual insurance market entities contract with private sector insurance companies, which act as servicing carriers. In a servicing carrier arrangement, a private sector insurance company issues and services the residual market entity's policies in exchange for a servicing fee. The servicing carrier does not bear the ultimate risk of such policies, but rather that risk is shared by all the insurance companies that participate in the residual market. However, other residual market entities (*e.g.*, most property plans) do not use servicing

carriers but, instead, issue and service their policies directly.

As mentioned in Interim Guidance II, Treasury has consulted with the NAIC to develop a proposed allocation methodology that is in accord with statutory requirements. In order to implement the requirements of section 103(d)(2)(B) (no separate treatment) and 103(d)(3) (inclusion of premium income) for State residual market insurance entities that share profits and losses with private sector insurers, Treasury is proposing the following methodology for allocating direct earned premiums across all insurance companies that participate in the residual market mechanism.

First, premiums written by a servicing carrier, on behalf of a State residual market insurance entity and ceded to such an entity shall not be included as ''Direct Earned Premium'' for purposes of calculation of that servicing carrier's deductible.

Second, premium distributed to or assumed by State residual market participants, whether directly from the State residual market insurance entity or as quota share insurers of risks written by servicing carriers, is included in ''Direct Earned Premium'' for purposes of calculation of each pool participant's deductible.

These two proposed provisions would allocate risk within a State residual market mechanism to the ultimate risk bearers. Because servicing carriers do not hold the entire risk for the policies that they service for the State residual market insurance entity, the premium from those policies should not fully accrue to the servicing carrier. The servicing carrier does absorb risk within the State residual market mechanism, and the appropriate portion of such risk would be allocated back to the servicing carrier and other residual market participants in the second step. The net effect of these offsetting exclusions and inclusions will be no change in total industry-wide ''Direct Earned Premium,'' but rather a reallocation to account for the unique nature of State residual market insurance entities.

The following provides an illustration as to how insurers that participate in State residual market insurance mechanisms should calculate their ''direct earned premium'' for purposes of calculating an ''insurer deductible'' as defined in section 102(7):

(1) Start with the appropriate measure of direct earned premium as specified in 31 CFR 50.5(d)(1) or 50.5(d)(2). That measure would include appropriate adjustments for personal insurance coverage as described in section 50.5(d)(1).

(2) Subtract the value of direct earned premium earned by servicing carriers and ceded to State residual market insurance entities if those direct earned premiums are reported in step 1.

(3) Add direct earned premium assumed from or distributed by State residual market insurance entities to insurers participating in the State residual market mechanism.

Although no report or information is requested or proposed at this time, Treasury may later request that the administrator of a qualifying State residual market entity provide Treasury with certified information about the aggregate premium and losses, and participant allocation information that it provides to participating insurance companies if, and to the extent, deemed to be needed by Treasury to verify insurers' ''deductible'' calculations.

C. Other State Residual Market Insurer Issues

Treasury has not yet issued regulations regarding the federal share of insured losses as described in section 103(e)(1)(A) of the Act; however, consistent with the treatment of premium income described above, Treasury is considering proposing that insured losses arising from policies insured through State residual market insurance entities described in section 103(d)(2)(B) be calculated for each residual market insurance participant based on each such insurer's share of the insured losses of the State residual market entity as allocated to the insurer by the residual market entity. Treasury is also considering proposing that the State residual market insurance entity provide an allocation of insured losses to each participant and other information related to the sharing of insured losses among residual market participants as part of regulations issued under the claims verification process. Treasury specifically solicits comment in these areas.

As regulations regarding the Federal share of insured loss and the claims verification process are developed, Treasury will also be considering the general issue of how the insolvency of insurers under the Program will be addressed, and in particular how the insolvency of a residual market participant or a servicing carrier affects the allocation of insured losses among residual market participants. Although Treasury has no specific proposal, Treasury also solicits comment on these issues.

D. Disclosure

In Interim Guidance II, Treasury did not require disclosures under section 103(b)(2) of the Act by insurers that fall under section 102(6)(A)(iv), if such State residual market and workers' compensation fund insurers did not have sufficient information to make such disclosures under section 103(b)(2), pending issuance of final regulations. Treasury is still evaluating the applicability of the disclosure requirement on certain insurers in this category and solicits information on this issue.

III. Procedural Requirements

This proposed rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under the terms of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Act itself requires State residual market insurance entities and State workers' compensation funds to participate in the Program, and these entities or funds are generally not small entities.

The Act itself requires all licensed or admitted insurers to participate in the Program. This includes all insurers regardless of size or sophistication. Although insurers that participate in sharing profits and losses of a State residual market insurance entity or State workers' compensation fund may include small entities, the proposed rule is based on existing business practices of residual market entities in determining the impact on participating insurers. The Act also defines property and casualty insurance to mean commercial lines without any reference to the size or scope of the commercial entity. Accordingly, any economic impact associated with the proposed rule flows from the Act and not the proposed rule. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty insurance policyholders and spreading the risk of insured loss resulting from an act of terrorism. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

For the reasons set forth above, 31 CFR part 50 is proposed to be amended as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

1. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322 (15 U.S.C 6701 note).

2. Subpart D of part 50 is proposed to be amended by adding §§ 50.30, 50.33, 50.35 and 50.36 to read as follows:

§ 50.30 General participation requirements.

(a) *Insurers.* As defined in § 50.5(f), all State residual market insurance entities and State workers' compensation funds are insurers under the Program even if such entities do not receive direct earned premiums.

(b) *Mandatory participation.* State residual market insurance entities and State workers'compensation funds that meet the requirements of § 50.5(f) are mandatory participants in the Program subject to the rules issued in this subpart.

(c) *Identification.* Treasury will release and maintain a list of State residual market insurance entities and State workers' compensation funds at *www.treasury.gov/trip*. Procedures for providing comments and updates to that list will be posted with the list.

§ 50.33 Entities that do not share profits and losses with private sector insurers.

(a) *Treatment.* A State residual market insurance entity or a State workers' compensation fund that does not share profits and losses with a private sector insurer is deemed to be a separate insurer under the Program.

(b) *Premium calculation.* A State residual market insurance entity or a State workers' compensation fund that is deemed to be a separate insurer should follow the guidelines specified in § 50.5(d)(1) or 50.5(d)(2) for the purposes of calculating the appropriate measure of direct earned premium.

§ 50.35 Entities that share profits and losses with private sector insurers.

(a) *Treatment.* A State residual market insurance entity or a State workers' compensation fund that shares profits and losses with a private sector insurer is not deemed to be a separate insurer under the Program.

(b) *Premium and loss calculation.* A State residual market insurance entity or a State workers' compensation fund that is not deemed to be a separate insurer should continue to report, in accordance with normal business practices, to each participant insurer its share of premium income and insured losses, which shall then be included respectively in the participant insurer's direct earned premium or insured loss calculations.

§ 50.36 Allocation of premium income associated with entities that do share profits and losses with private sector insurers.

(a) *Servicing carriers.* For purposes of this subpart, a servicing carrier is an insurer that enters into an agreement to place and service insurance contracts for a State residual market insurance entity or a State workers' compensation fund and to cede premiums associated with such insurance contracts to the State residual market insurance entity or State workers' compensation fund. Premiums written by a servicing carrier on behalf of a State residual market insurance entity or State workers' compensation fund that are ceded to such an entity or fund shall not be included as direct earned premium (as described in § 50.5(d)(1) or 50.5(d)(2)) of the servicing carrier.

(b) *Participant insurers.* For purposes of this subpart, a participant insurer is an insurer that shares in the profits and losses of a State residual market insurance entity or a State workers' compensation fund. Premium income that is distributed to or assumed by participant insurers in a State residual market insurance entity or State workers' compensation fund (whether directly or as quota share insurers of risks written by servicing carriers), shall be included in direct earned premium (as described in § 50.5(d)(1) or 50.5(d)(2)) of the participant insurer.

Dated: April 11, 2003.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 03–9613 Filed 4–17–03; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Friday,
April 18, 2003

Part V

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of State Implementation Plans: California; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–274–0371; FRL–7473–3]

Approval and Promulgation of State Implementation Plans; California—South Coast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve state implementation plan (SIP) revisions submitted by the State of California to provide for attainment of the particulate matter (PM–10) national ambient air quality standards (NAAQS) in the Los Angeles-South Coast Air Basin Area and to establish emissions budgets for purposes of transportation conformity. EPA is also granting the State's request for an extension of the PM–10 attainment deadline to December 31, 2006.

EFFECTIVE DATE: This rule is effective on May 19, 2003.

ADDRESSES: You can inspect copies of the docket for this action during normal business hours at EPA's Region IX office. You can inspect copies of the submitted SIP materials at the following locations:

U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

California Air Resources Board, 1001 I Street, Sacramento, California, 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California, 91765–0932.

Most of the plan materials are also electronically available at: *http://www.aqmd.gov/aqmp/.*

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region IX, (415) 972–3957, or *jesson.david@epa.gov.*

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

I. Proposed Action

On December 17, 2002 (67 FR 77212), we proposed to approve the serious area PM–10 SIP submittals by California for the South Coast Air Basin (or ''South Coast''), including the motor vehicle emissions budgets, and to grant the State's request that we extend the attainment date from December 31, 2001 to December 31, 2006, in accordance with Clean Air Act (CAA) section 188(e).

Our proposed approval was based on the following SIP submittals by the State of California:

(1) That portion of the 1994 Air Quality Management Plan (AQMP, or ''1994 plan''), adopted by the South Coast Air Quality Management District (SCAQMD) on September 9, 1994, and submitted by the California Air Resources Board (CARB) on November 15, 1994, that addresses the CAA provisions on control measures and best available control measure (BACM);

(2) the 1997 AQMP (''1997 plan'') adopted by the SCAQMD on November 15, 1996, and submitted by CARB on February 5, 1997, addressing the CAA provisions for emissions inventories, control measures and BACM, reasonable further progress, contingency measures, attainment demonstration, motor vehicle emissions budgets, and attainment date extension;

(3) the 1998 amendment to the 1997 plan (''1998 amendment''), adopted by the SCAQMD on April 10, 1998, and submitted by CARB on April 22, 1998, establishing motor vehicle emission budgets;

(4) the 1999 amendment to the 1997 plan (''1999 amendment''), adopted by the SCAQMD on December 10, 1999, and submitted by CARB on February 4, 2000, addressing the CAA provisions for control measures and BACM; and

(5) the 2002 status report adopted by SCAQMD on June 7, 2002, and submitted by CARB on November 18, 2002, addressing the CAA provisions for control measures and BACM, reasonable further progress, and motor vehicle emissions budgets for purposes of transportation conformity.

The proposal contains detailed information on these SIP submittals and our evaluation of the submittals against applicable CAA provisions and EPA policies relating to serious area PM–10 SIPs.

II. Public Comments

We received one public comment from an individual asking that EPA specify the statutes relied upon to grant an extension of time to attain the NAAQS. The commenter further asked EPA to take a second look at policies to extend attainment dates if adequate legal authority does not exist.

As discussed in our proposed rule (67 FR 77217), CAA section 188(e) allows states to apply for up to a 5-year extension of the PM–10 serious area attainment deadline of December 31, 2001. CAA section 188(e) provides us with explicit authority to grant the extension if the state makes a showing that: (1) The plan for the area includes the most stringent measures that are included in the SIP of any state or are achieved in practice in any state, and can feasibly be implemented in the area, (2) the state complied with all requirements and commitments pertaining to the area in the implementation plan for the area, and (3) attainment by 2001 would be impracticable. In the proposed action, we show how the State's submittals satisfy each of these criteria. The commenter provided no evidence that the prerequisites to approval of the extension had not been satisfied. We continue to conclude that the State has met the applicable statutory provisions and we are therefore finalizing our attainment date extension.

Under our policy for reviewing the adequacy of motor vehicle emissions budget submissions, these budgets were posted on our transportation conformity Web site (*http://www.epa.gov/oms/traq*) for public comment. We received no comments on the budgets.

III. EPA Action

In this document, we are finalizing the following actions on the PM–10 SIP submittals for the South Coast. For each action, we indicate the page on which the element is discussed in our proposal.

(1) Approval of the baseline and projected emissions inventories of the 1997 plan (Appendix III and Appendix V, Chapter 2) under CAA section 172(c)(3)—67 FR 77214–5.

(2) Approval of the control measures in the 1997 plan (Chapter 4, Appendix IV–A), 1999 amendment (Appendix B), and 2002 status report (Attachment D), under CAA section 110(k)(3) as meeting the provisions of CAA sections 110(a), 188(e), and 189(b)(1)(B)—67 FR 77215 (Table 1).

(3) Approval of the contingency measures in the 1997 plan (Appendix IV–A), under CAA section 110(k)(3) as meeting the provisions of CAA section 172(c)(9)—67 FR 77216.

(4) Approval of the reasonable further progress provisions of the 1997 plan (Chapters 4 and 6; Appendix III; Appendix V, Chapter 2) and 2002 status report under CAA section 189(c)—67 FR 77216–7 (Table 2).

(5) Approval of the demonstration of attainment in the 1997 plan (Chapter 5, Appendix V) under CAA section 189(b)(1)(A)—67 FR 77217.

(6) Approval of the attainment deadline extension to December 31, 2006 in the 1997 plan (Chapters 5 and 6; Appendix V, Chapter 2), under CAA section 188(e)—67 FR 77217–8.

(7) Approval of the motor vehicle emission budgets for purposes of transportation conformity for 2003, 2006, 2010, and 2020, under CAA section 176(c)(2)(A)—67 FR 77218–9 (Table 3). As proposed, we are limiting

this approval to last only until the effective date of our adequacy findings for new replacement budgets. For further discussion of the rationale for, and effect of, this limitation, please see our recent promulgation of a limitation on motor vehicle emission budgets associated with various California SIPs, at 67 FR 69139 (November 15, 2002).

IV. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. section 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. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 27, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(247)(i)(A)*(4)*, (c)(272)(i)(A)*(2)*, and (c)(309)to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(247) * * *

(i) * * *

(A) * * *

(4) Baseline and projected emissions inventories, SCAQMD commitment to adopt and implement control measures, reasonable further progress, contingency measures, attainment demonstration, PM–10 attainment date extension request to December 31, 2006, as contained in the South Coast 1997 Air Quality Management Plan, with respect to PM–10.

* * * * *

(272) * * *

(i) * * *

(A) * * *

(2) SCAQMD commitment to adopt and implement control measures, as contained in the 1999 Amendment to the South Coast Air Quality Management Plan, with respect to PM–10.

* * * * *

(309) New and amended plan for the following agency was submitted on November 18, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District (SCAQMD).

(1) SCAQMD commitment to adopt and implement control measures, and reasonable further progress, as contained in the Implementation Status of the PM–10 Portion of the 1997 AQMP and PM–10 Emissions Budgets for Transportation Conformity use (2002 status report) adopted by SCAQMD on June 7, 2002.

* * * * *

■ 3. Section 52.244 is amended by adding paragraph (e) to read as follows:

§ 52.244 Motor vehicle emissions budgets.

* * * * *

(e) Approval of the motor vehicle emissions budgets for the following PM–10 reasonable further progress and attainment SIPs will apply for transportation conformity purposes only until new budgets based on updated planning data and models have been submitted and EPA has found the budgets to be adequate for conformity purposes.

(1) South Coast, approved April 18, 2003.

[FR Doc. 03–9478 Filed 4–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–274–0372; FRL–7473–4]

Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes; California—Coachella Valley

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve state implementation plan (SIP) revisions submitted by the State of California to provide for attainment of the particulate matter (PM–10) national ambient air quality standard (NAAQS) in the Coachella Valley area and to establish emissions budgets for use in transportation conformity determinations. EPA is also granting the State's request for an extension of the PM–10 attainment deadline to December 31, 2006.

EFFECTIVE DATE: This action is effective May 19, 2003.

ADDRESSES: You can inspect copies of the docket for this action during normal business hours at the EPA Region IX office. You can inspect copies of the submitted SIP materials at the following locations.

California Air Resources Board, 1001 I Street, Sacramento, California, 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California, 91765–0932.

The 2002 plan is electronically available at: *http://www.aqmd.gov/aqmp/.*

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, Air Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 947–4147 or e-mail: *kaplan.eleanor@epa.gov.*

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

I. Proposed Actions

On December 17, 2002 (67 FR 77212), we proposed to approve the serious area PM–10 SIP submittals by California for the Coachella Valley (Valley) including the motor vehicle emissions budgets, and to grant the State's request that we extend the attainment date from December 31, 2001 to December 31, 2006, in accordance with Clean Air Act (CAA) section 188(e).

We proposed to approve specific portions of the following submittals:

(1) 1994 plan: The South Coast Air Quality Management District (SCAQMD), which has jurisdiction over the Valley, adopted the 1994 BACM SIP for the Valley on July 8, 1994 and the California Air Resources Board (CARB) submitted the plan to us on August 16, 1994. The 1994 plan, in accordance with the provisions of CAA section 189(1)(B), identified the Best Available Control Measures (BACM) that were required for this serious PM–10 nonattainment area and committed to implementation of these measures by February 8, 1997.

(2) 1996 Plan: The SCAQMD adopted a Redesignation and Maintenance Plan on December 13, 1996 and submitted the plan to us on February 5, 1997. The 1996 plan addressed the remaining plan provisions for serious PM–10 nonattainment areas, as specified in the CAA sections 188 and 189. However, before EPA acted on the 1996 plan, the area recorded a violation of the annual PM–10 NAAQS during the period from 1999 through 2001 and was therefore unable to meets its attainment date of December 31, 2001.

(3) 2002 Plan: On June 21, 2002 and September 13, 2002 the SCAQMD adopted amendments to the 1996 plan and CARB submitted the 2002 plan to us on November 18, 2002. The 2002 plan addresses the CAA provisions for emissions inventories, control measures and BACM, reasonable further progress, contingency measures, attainment demonstration, attainment date extension and motor vehicle emissions budgets.

Our proposal on this action contains detailed information on these SIP submittals and our evaluation of the submittals against applicable CAA provisions and EPA policies relating to serious area PM–10 SIPs.

II. Public Comments

Under EPA's policy for reviewing the adequacy of motor vehicle emissions budget submissions, these budgets were posted on the EPA Web site for public comment.[1] The public comment period was open for thirty days. No comments were received by EPA during the 30 day adequacy comment period nor did EPA receive any comments on our December 17, 2002 proposal.

III. Summary of Final Action

In this document, we are finalizing the following actions on the PM–10 SIP submittals for the Coachella Valley. For each action, we indicate the page on which the element is discussed in our proposal.

(1) Approval of the baseline and projected emissions inventories of the 2002 plan (Chapter 3) under CAA section 172(c)(3)—67 FR 77206–77207.

(2) Approval of the control measures in the 1994 plan (Chapter 4), 1996 plan (Chapter 4), and the 2002 plan (Chapters 4 and 5) under CAA section 110(k)(3) as meeting the provisions of CAA sections 110(a), 188(e), and 189(b)(1)(B)—67 FR 77207–77209.

(3) Approval of the contingency measures in the 2002 plan, under CAA section 110(k)(3) as meeting the provisions of CAA section 172(c)(9)—67 FR 77209.

(4) Approval of the reasonable further progress provisions of the 2002 plan (Appendix E–3, Table E–2)—67 FR 77216–7 (Table 2).

(5) Approval of the demonstration of attainment in the 1997 plan (Chapter 5, Appendix V) under CAA section 189(b)(1)(A)—67 FR 77209.

(6) Approval of the attainment deadline extension to December 31, 2006 in the 2002 plan (Chapter 8)under CAA section 188(e)—67 FR 77210.

(7) Approval of the motor vehicle emission budgets for use in transportation conformity determinations for the years 2003 and 2006 under CAA section 176(c)(2)(A)—67 FR 77211 (Table E–3). As proposed, we are limiting this approval to last only until the effective date of our adequacy findings for new replacement budgets. For further discussion of the rationale for, and effect of, this limitation, please see our recent promulgation of a limitation on motor vehicle emission budgets associated with various California SIPs, at 67 FR 69139 (November 15, 2002).

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is

[1] The e-mail address for EPA's conformity Web site is *http://www.epa.gov/oms/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

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

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

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

The Congressional Review Act, 5 U.S.C. section 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. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 27, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(247) (i)(A)(*5*), and (c)(309)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(247) * * *

(i) * * *

(A) * * *

(*5*) SCAQMD commitment to adopt and implement control measures, as contained in the Coachella Request for Redesignation and Maintenance Plan for PM–10.

* * * * *

(309) * * *

(i) * * *

(A) * * *

(*2*) Baseline and projected emissions inventories, SCAQMD commitment to adopt and implement control measures, reasonable further progress, contingency measures, attainment demonstration, PM–10 attainment date extension, and motor vehicle emissions budgets, as contained in Chapters 3, 4, 5, 6 and 8 of the 2002 Coachella Valley PM–10 SIP adopted by SCAQMD on June 21, 2002, and the 2002 Coachella Valley PM–10 SIP Addendum (Appendix E) adopted by SCAQMD on September 13, 2002.

* * * * *

■ 3. Section 52.244 is amended by adding paragraph (e)(2) to read as follows:

§ 52.244 Motor vehicle emissions budgets.

* * * * *

(e) * * *

(2) Coachella Valley, approved April 18, 2003.

[FR Doc. 03–9479 Filed 4–17–03; 8:45 am]

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