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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 213

RIN 3206–AJ70

Excepted Service—Temporary Organizations

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to amend the excepted service Schedule A authority for temporary organizations. This regulation will revise the definition of the term ''temporary organization'' to comply with recently-enacted legislation. It will also establish criteria with which temporary organizations must comply if they wish to extend an employee's appointment.

DATES: *Effective Date:* Effective Date: May 8, 2003.

Applicability Date: A temporary organization that does not meet the new criteria must move its incumbents from the authority by August 6, 2003.

Comments Date: Comments must be received on or before July 7, 2003.

ADDRESSES: Send or deliver written comments to Ellen E. Tunstall, Deputy Associate Director for Talent and Capacity Policy, Office of Personnel Management, 1900 E Street, NW., Room 6551, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Christina Vay by telephone on 202–606–0960, by FAX on 202–606–2329, or by TDD on 202–418–3134.

SUPPLEMENTARY INFORMATION: The Floyd D. Spence National Defense Authorization Act for fiscal year 2001 (Pub. L. 106–398, October 30, 2000) added a new subchapter IV to chapter 31 of title 5, United States Code. The new subchapter:

—Defined the term ''temporary organization;''
—Provided that the head of a temporary organization may make excepted service appointments to fill positions in these organizations of up to 3 years;
—Provided for appointment extensions for no more than 2 years; and
—Gave return rights to those who transfer or convert (with agency head approval) to these appointments from career or career-conditional appointments if certain conditions are met.

Because of these statutory changes, we are amending the current excepted service Schedule A appointing authority at 5 CFR 213.3199 for temporary organizations. If a temporary organization has employees currently appointed under this authority and the temporary organization meets the criteria of the revised authority at 5 CFR 213.3199, then the appointments are valid and no changes to the appointments are needed. If a temporary organization does not meet the criteria of the revised authority, it must move any incumbents from the authority within 90 days of the date of this interim regulation. The incumbents are moved to either another governmentwide excepted service authority or an agency-specific excepted service authority that has already been granted. If the temporary organization does not have another authority available to use, it may request from OPM an agency-specific excepted service authority.

We are issuing this regulation as an interim rule because the law defining temporary organizations is already in effect. Delaying the effective date of the regulation would not change the fact that the law is in place and must be applied.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 213

Government employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM amends 5 CFR part 213 as follows:

PART 213—EXCEPTED SERVICE

■ 1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3161; 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; sec. 213.101 also issued under 5 U.S.C. 2103; sec. 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 *et seq.;* Pub. L. 105–339, 112 Stat. 3182–83; and E.O. 13162.

■ 2. In subpart C § 213.3199 is revised to read as follows:

§ 213.3199 Temporary organizations.

Positions on the staffs of temporary organizations, as defined in 5 U.S.C. 3161(a). Appointments may not exceed 3 years, but temporary organizations may extend the appointments for 2 additional years if the conditions for extension are related to the completion of the study or project.

[FR Doc. 03–11398 Filed 5–7–03; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03–032–1]

Sapote Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining part of Hidalgo County, TX, because of the sapote fruit fly and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the sapote fruit fly to noninfested areas of the United States.

DATES: This interim rule was effective May 2, 2003. We will consider all comments that we receive on or before July 7, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–032–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–032–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–032–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

We are amending the ''Domestic Quarantine Notices'' in 7 CFR part 301 by adding a new subpart, ''Sapote Fruit Fly'' (§§ 301.99 through 301.99–10, referred to below as the regulations). The regulations quarantine part of Hidalgo County, TX, because of the sapote fruit fly and restrict the interstate movement of regulated articles from the quarantined area.

The sapote fruit fly (*Anastrepha serpentina*) is a destructive pest of fruits and vegetables, including apples, avocados, grapefruit, mangoes, peaches, pears, and tangerines. This pest can cause serious economic losses by lowering the yield and quality of these fruits and vegetables and, in some cases, by damaging seedlings and young plants. Heavy infestations can result in the complete loss of these crops.

Recent trapping surveys in the lower Rio Grande valley in Texas have established that part of Hidalgo County, TX, is infested with sapote fruit fly. Officials of the Animal and Plant Health Inspection Service (APHIS) and State and county agencies in Texas have begun an intensive survey and eradication program in the infested area. Texas has restricted the intrastate movement of certain articles from the infested area to prevent the spread of the sapote fruit fly within Texas. However, Federal regulations are necessary to restrict the interstate movement of certain articles from the infested area to prevent the spread of the sapote fruit fly to noninfested areas of the United States. This interim rule establishes those Federal regulations, which are described below.

Section 301.99—Restrictions on Interstate Movement of Regulated Articles

Section 301.99 prohibits the interstate movement of regulated articles from quarantined areas except in accordance with the regulations.

Section 301.99–1—Definitions

Section 301.99–1 contains definitions of the following terms: *Administrator, Animal and Plant Health Inspection Service, certificate, compliance agreement, core area, day degrees, departmental permit, dripline, infestation, inspector, interstate, limited permit, moved (move, movement), person, Plant Protection and Quarantine, quarantined area, regulated article, sapote fruit fly,* and *State.*

Section 301.99–2—Regulated Articles

Certain articles present a significant risk of spreading the sapote fruit fly if they are moved from quarantined areas without restrictions. We call these articles regulated articles. Paragraphs (a) through (e) of § 301.99–2 list the following as regulated articles:

- The sapote fruit fly;
- Fruits and vegetables that are not canned or dried or that are not frozen below −17.8 °C (0 °F);
- Soil within the dripline of plants that are producing or have produced those fruits or vegetables; and
- Any other product, article, or means of conveyance that an inspector determines to present a risk of spreading the sapote fruit fly after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions in the regulations.

The last item listed above, which provides for the designation of ''any other product, article, or means of conveyance'' as a regulated article, is intended to address the risks presented by, for example, a truck with sapote fruit fly pupae in the cracks of its floorboards, thus enabling an inspector to designate that truck as a regulated article in order to ensure that any necessary risk-mitigating measures are carried out.

Section 301.99–3—Quarantined Areas

Paragraph (a) of § 301.99–3 provides the criteria for the inclusion of States, or portions of States, in the list of quarantined areas. Under these criteria, any State or portion of a State in which the sapote fruit fly is found by an inspector, or in which the Administrator has reason to believe that the sapote fruit fly is present, will be listed as a quarantined area. These criteria also provide that an area will be designated as a quarantined area when the Administrator considers it necessary due to the area's inseparability for quarantine enforcement purposes from localities in which the sapote fruit fly has been found.

Paragraph (a) of § 301.99–3 also provides that we will designate less than an entire State as a quarantined area only if we determine that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of regulated articles and that the designation of less than an entire State as a quarantined area will prevent the interstate spread of the sapote fruit fly. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire State as a quarantined area.

The boundary lines that delimit the portion of a State that is designated as a quarantined area are set up approximately 4.5 miles from the locations where sapote fruit fly has been detected. The 4.5 mile radius distance for regulated areas from the trapping sites for sapote fruit fly is based upon several factors, including: Previous experience with fruit fly eradication programs, estimated efficacy of trapping grids, available data on natural dispersal, and recommendations from fruit fly experts familiar with the biology and behavior of the sapote fruit fly. The boundary lines may vary due to factors such as the location of sapote fruit fly host material, the location of transportation centers such as bus stations and airports, the pattern of persons moving in that State, the

number and patterns of distribution of the sapote fruit fly, and the use of clearly identifiable lines for the boundaries.

We have determined that it is not necessary to designate the entire State of Texas as a quarantined area. The sapote fruit fly has not been found in any area of the State other than a portion of Hidalgo County, and Texas has adopted and is enforcing restrictions on the intrastate movement of regulated articles from that area that are equivalent to those we are imposing on the interstate movement of regulated articles. Therefore, in accordance with the criteria described in the previous paragraph, we have designated part of the lower Rio Grande valley in Hidalgo County, TX, as a quarantined area. The boundaries of the quarantined area are described in § 301.99–3(c) in the rule portion of this document.

Paragraph (b) of § 301.99–3 provides that we may temporarily designate any nonquarantined area in a State as a quarantined area when we determine that the nonquarantined area meets the criteria for designation as a quarantined area described in § 301.99–3(a). In such cases, we will give the owner or person in possession of the area a copy of the regulations along with written notice of the area's temporary designation as a quarantined area, after which time the interstate movement of any regulated article from the area will be subject to the regulations. This provision is necessary to prevent the spread of the sapote fruit fly during the time between the detection of the pest and the time a document quarantining the area can be made effective and published in the **Federal Register**. In the event that an area's designation as a temporary quarantined area is terminated, we will provide written notice of that termination to the owner or person in possession of the area as soon as practicable.

Section 301.99–4—Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas

This section requires most regulated articles moving interstate from quarantined areas to be accompanied by a certificate or a limited permit. The U.S. Department of Agriculture (USDA or the Department) may move regulated articles interstate without a certificate or limited permit if the articles are moved for experimental or scientific purposes. However, the articles must be moved in accordance with a departmental permit issued by the Administrator, under conditions specified on the permit to prevent the spread of the sapote fruit fly.

Except for articles moved by APHIS or the Department, only regulated articles that are moved into the quarantined area from outside the quarantined area and that are accompanied by a waybill that indicates the point of origin may be moved interstate from the quarantined area without a certificate or limited permit. Additionally, the articles must be moved in an enclosed vehicle or be completely enclosed so as to prevent access by sapote fruit flies. The regulated articles must also be moved through the quarantined area without stopping (except for refueling and for traffic conditions such as traffic lights and stop signs), and the regulated articles must not be unpacked or unloaded in the quarantined area.

Section 301.99–5—Issuance and Cancellation of Certificates and Limited Permits

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles when an inspector finds that, because of certain conditions (*e.g.*, the article is free of sapote fruit fly), there is no pest risk before movement. Regulated articles accompanied by a certificate may be moved interstate without further restrictions. Limited permits are issued for regulated articles when an inspector finds that, because of a possible pest risk, the articles may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section 301.99–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.99–5(a) provides that a certificate will be issued by an inspector for the movement of a regulated article if the inspector determines that the article: (1) Is free of the sapote fruit fly, has been treated in the presence of an inspector in accordance with § 301.99–10, or comes from a premises of origin that is free of the sapote fruit fly; (2) will be moved in compliance with any additional emergency conditions deemed necessary to prevent the spread of the sapote fruit fly under section 414 of the Plant Protection Act (7 U.S.C. 7714); and (3) is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to that article.

We have included a footnote (number 4) that provides an address for securing the addresses and telephone numbers of the local Plant Protection and Quarantine (PPQ) offices at which services of inspectors may be requested. We have also included a footnote (number 5) that explains that the Secretary of Agriculture may, under the Plant Protection Act, take emergency actions to seize, quarantine, treat, destroy, or apply other remedial measures to articles that are, or that he or she has reason to believe are, infested or infected by or contain plant pests.

Paragraph (b) of § 301.99–5 provides for the issuance of a limited permit by an inspector for interstate movement of a regulated article if the inspector determines that the article is to be moved to a specified destination for specified handling, utilization, or processing, and that the movement will not result in the spread of the sapote fruit fly. A limited permit will only be issued if the regulated article will be moved in compliance with any additional emergency conditions imposed by the Administrator under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the sapote fruit fly, and if the regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

Paragraph (c) of § 301.99–5 allows any person who has entered into and is operating under a compliance agreement to issue a certificate or limited permit for the interstate movement of a regulated article after an inspector has determined that the article is eligible for a certificate or limited permit under § 301.99–5(a) or (b).

Also, § 301.99–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector if the inspector determines that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact in the event that the person wishes to appeal the cancellation.

Section 301.99–6—Compliance Agreements and Cancellation

Section 301.99–6 provides for the use of and cancellation of compliance agreements. Compliance agreements are provided for the convenience of persons who are involved in the growing, handling, or moving of regulated articles from quarantined areas. A person may enter into a compliance agreement when an inspector has determined that the person requesting the compliance

agreement has been made aware of the requirements of the regulations and the person has agreed to comply with the requirements of the regulations and the provisions of the compliance agreement. This section contains a footnote (number 7) that explains where compliance agreement forms may be obtained.

Section 301.99–6 also provides that an inspector may cancel the compliance agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact in the event that the person wishes to appeal the cancellation.

Section 301.99–7—Assembly and Inspection of Regulated Articles

Section 301.99–7 provides that any person (other than a person authorized to issue certificates or limited permits under § 301.99–5(c)) who desires a certificate or limited permit to move regulated articles must request, at least 48 hours before the desired interstate movement, that an inspector issue a certificate or limited permit. The regulated articles must be assembled in a place and manner directed by the inspector.

Section 301.99–8—Attachment and Disposition of Certificates and Limited Permits

Section 301.99–8 requires the certificate or limited permit issued for movement of the regulated article to be attached, during the interstate movement, to the regulated article, or to a container carrying the regulated article, or to the consignee's copy of the accompanying waybill. Further, the section requires that the carrier or the carrier's representative must furnish the certificate or limited permit to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

Section 301.99–9—Costs and Charges

Section 301.99–9 explains the APHIS policy that the services of an inspector that are needed to comply with the regulations are provided without cost between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, to persons requiring those services, but that we will not be responsible for any other costs or charges (such as overtime costs for inspections conducted at times other than between 8 a.m. to 4:30 p.m., Monday through Friday, except holidays).

Section 301.99–10—Treatments

Section 301.99–10 lists treatments that qualify soil and regulated articles for interstate movement with a certificate as provided in § 301.99–5.

The introductory text of this section provides that any person moving fruits and vegetables originating inside the quarantined area outside of the quarantined area may treat those fruits and vegetables with an applicable treatment listed in the PPQ Treatment Manual, which is incorporated by reference at 7 CFR 300.1, ''Plant Protection and Quarantine Treatment Manual.''

Paragraph (a) provides that soil within the dripline of plants that are producing or have produced the fruits and vegetables listed in § 301.99–2(a) of the subpart may be treated with diazinon at the rate of 5 pounds active ingredient per acre with sufficient water to wet the soil to a depth of at least ½ inch. Research by the Department's Agricultural Research Service has determined that this diazinon treatment would destroy the sapote fruit fly in soil.

Paragraph (b) provides that citrus fruits originating inside the quarantined area that are to be moved outside the quarantined area may be treated with methyl bromide fumigation in APHIS-approved chambers as an alternative to the treatments prescribed in the PPQ Treatment Manual. Exposure period for this treatment is 2 hours. Fruit pulp temperature must be between 21.1 °C and 29.4 °C (70 °F and 85 °F). This temperature requirement refers to fruit pulp only and not to air temperature within the chamber. Fruit taken from a cooling room may have to be pre-warmed before fumigation is attempted. To determine fruit pulp temperature, stab several fruit to the center with a suitable thermometer that reads at least in whole degrees (F or C). The lowest temperature should be used, not the average. The methyl bromide dosage is set at a rate of 2.5 pounds of 100 percent pure, type ''Q'' (for quarantine use only) methyl bromide per 1,000 cubic feet of chamber space. After the treatment cycle is complete, regulated articles will be eligible for interstate movement with a certificate as provided in § 301.99–5 unless, prior to treatment, representative sampling revealed a level of infestation greater than 0.5 percent for the lot.

Paragraph (d) provides that premises that are located within the regulated area but outside the infested core area, and that produce regulated articles, may receive regular treatments with malathion or spinosad bait spray as an alternative to treating fruits and vegetables with methyl bromide fumigation as described above or with treatments prescribed in the PPQ Treatment Manual. These treatments must take place at 6-to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the sapote fruit fly. Determination of the time period must be based on the day degrees model for sapote fruit fly. Since the length of fruit fly life cycles vary according to the temperature of their environment, the day degrees model is used to project the duration of the life cycle of the fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre. Spinosad bait spray must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications of spinosad, the mixture may be diluted with water to improve coverage. After the treatment cycle is complete, regulated articles produced on the premises will be eligible for interstate movement with a certificate as provided in § 301.99–5.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the sapote fruit fly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule:

(1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for the Sapote Fruit Fly Cooperative Eradication Program. The assessment provides a basis for the conclusion that the implementation of this interim rule will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this document). Copies may also be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. In addition, copies are available on the Internet at *http://www.aphis.usda.gov/ppd/es/sapff.htm.*

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0222 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 03–032–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 03–032–1 and send your comments within 60 days of publication of this rule.

This interim rule quarantines a part of Hidalgo County, TX, because of the sapote fruit fly and restricts the interstate movement of regulated articles from the quarantined area. Its implementation will require us to engage in certain information collection activities, in that certain articles may not be moved interstate from the quarantined area unless they are accompanied by a certificate or limited permit. A certificate or limited permit may be issued by an inspector (*i.e.*, an APHIS employee or other person authorized by the APHIS Administrator to enforce the regulations) or by a person who has entered into a written compliance agreement with APHIS. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.16 hours per response.

Respondents: Growers, State plant regulatory officials.

Estimated annual number of respondents: 700.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 700.

Estimated total annual burden on respondents: 112 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 is revised to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–

16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Part 301 is amended by adding a new ''Subpart—Sapote Fruit Fly,'' §§ 301.99 through 301.99–10, to read as follows:

Subpart—Sapote Fruit Fly

Sec.
301.99 Restrictions on interstate movement of regulated articles.
301.99–1 Definitions.
301.99–2 Regulated articles.
301.99–3 Quarantined areas.
301.99–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
301.99–5 Issuance and cancellation of certificates and limited permits.
301.99–6 Compliance agreements and cancellation.
301.99–7 Assembly and inspection of regulated articles.
301.99–8 Attachment and disposition of certificates and limited permits.
301.99–9 Costs and charges.
301.99–10 Treatments.

Subpart—Sapote Fruit Fly

§ 301.99 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

§ 301.99–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of sapote fruit fly and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

Core area. The 1-square-mile area surrounding each property where sapote fruit fly has been detected.

Day degrees. A mathematical construct combining average temperature over time that is used to calculate the length of a sapote fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F:

(Minimum Daily Temp + Maximum Daily Temp)/2) − 54 = Day Degrees.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.99–4(c) of this subpart.

Dripline. The line around the canopy of a plant.

Infestation. The presence of the sapote fruit fly or the existence of circumstances that makes it reasonable to believe that the sapote fruit fly is present.

Inspector. Any employee of APHIS or other person authorized by the Administrator to perform the duties required under this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.99–5(b) only to a specified destination and only in accordance with specified conditions.

Moved (move, movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Plant Protection and Quarantine. The Plant Protection and Quarantine program of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

Quarantined area. Any State, or any portion of a State, listed in § 301.99–3(c) or otherwise designated as a quarantined area in accordance with § 301.99–3(b).

Regulated article. Any article listed in § 301.99–2 or otherwise designated as a regulated article in accordance with § 301.99–2(d).

Sapote fruit fly. The insect known as the sapote fruit fly, *Anastrepha serpentina,* in any stage of development.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

§ 301.99–2 Regulated articles.

The following are regulated articles:

(a) Sapote fruit flies.[2]

(b) The following fruits and vegetables:

Abiu (*Pouteria caimito*)
Apple (*Malus domestica*)
Avocado (*Persea americana*)
Black sapote (*Diospyros digyna*)
Citrus (*Citrus* spp.)
Egg-fruit tree (*Pouteria campechiana*)
Green sapote (*Pouteria viridis*)
Guava (*Psidium guajava*)
Hog-plum (*Spondias mombin*)
Ketembilla (*Dovyalis hebecarpa*)
Lucmo (*Pouteria obovata*)
Mammy apple (*Mammea americana*)
Mango (*Mangifera indica*)
Nance (*Byrsonima crassifolia*)
Panama orange (*Citrofortunella x mitis*)
Peach (*Prunus perscia*)
Pear (*Pyrus communis*)
Pond-apple (*Annona glabra*)
Quince (*Cydonia oblonga*)
Red mombin (*Spondias purpurea*)
Sapodilla (*Manilkara zapota*)
Sapote (*Diospyros* spp.)
Star-apple (*Chrysophyllum Cainito*)

Any fruits or vegetables that are not canned or dried or frozen below −17.8 °C. (0 °F.).

(c) Soil within the dripline of plants that are producing or have produced the fruits or vegetables listed in paragraph (b) of this section.

(d) Any other product, article, or means of conveyance not listed in paragraphs (a) through (c) of this section that an inspector determines presents a risk of spreading the sapote fruit fly, after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

§ 301.99–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which the sapote fruit fly has been found by an inspector, in which the Administrator has reason to believe that the sapote fruit fly is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which the sapote fruit fly has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 414 of the Plant Protection Act (7 U.S.C. 7714).

[2] Permit and other requirements for the interstate movement of sapote fruit flies are contained in part 330 of this chapter.

movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the sapote fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, the area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described in this paragraph are designated as quarantined areas:

Texas

Hidalgo County. That portion of Hidalgo County bounded by a line as follows: Beginning at the intersection of South Cage Boulevard and the Rio Grande River; then northwest along the Rio Grande River for 17.11 miles; then north along an imaginary line to the intersection of Aloe Vera and Sunrise Street; then northeast along an imaginary line to the intersection of Victoria and Davina Street; then northwest along an imaginary line to the intersection of Farm Road 495 and North Stewart Road; then northeast along an imaginary line to the intersection of North Ware Road and Mile 4 North Road; then east on Mile 4 North Road (also known as West Alberta Road) to South I Road; then south on South I Road to West Earling Road; then east on West Earling Road to North San Juan Road; then south on North San Juan Road to East Ferguson Avenue; then east on East Ferguson Avenue to East Gasline Road; then south on East Gasline Road to East Nebraska Road; then east on East Nebraska Road to North Morningside Road; then south on North Morningside Road to Expressway 83; then east on Expressway 83 to North Alamo Road; then north on North Alamo Road to Earling Road; then west on Earling Road to North Morningside Road; then north on North Morningside Road to East Curve Road; then east on East Curve Road to Alamo Road; then north on Alamo Road to Mile 17 Road North; then west on Mile 17 Road North to Sharp Road; then northeast on Sharp Road to Mile 18 Road North; then east on Mile 18 Road North continuing along an imaginary line to Mile 17 Road North and Mile 6 Road West; then south on Mile 6 Road West to Mile 17 Road North; then east on Mile 17 Road North to West Broadway Street; then south on West Broadway Street to State Highway 107; then east on State Highway 107 to Mile 4 Road West; then south on Mile 4 Road West to Mile 13 Road North; then east on Mile 13 Road North to Farm Road 1015; then south on Farm Road 1015 to Expressway 83; then west on Expressway 83 to South Bridge Avenue; then south on South Bridge Avenue to East Eighth Street; then west on East Eighth Street to South Border Avenue; then south on South Border Avenue to Mile 6 Road North; then west on Mile 6 Road North to Midway Road; then south on Midway Road to Lott Road; then west on Lott Road, continuing along an imaginary line to the intersection of FM 907 and Resaca Road; then south on FM 907 to Balli Road; then west on Balli Road to FM 2557; then south on FM 2557 to Las Milpas Road; then east on Las Milpas Road to South I Road; then south on South I Road to Hi Line Road; then west on Hi Line Road to South Cage Boulevard; then south on South Cage Boulevard to the point of beginning.

§ 301.99–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area [3] only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.99–5 and 301.99–8;

(b) Without a certificate or limited permit if:

(1) The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by sapote fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area; and

(3) The regulated article is moved through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs.

(c) Without a certificate or limited permit if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a departmental permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the departmental permit and found by the Administrator to be adequate to prevent the spread of the sapote fruit fly; and

(4) With a tag or label bearing the number of the departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

(Approved by the Office of Management and Budget under control number 0579–0222)

§ 301.99–5 Issuance and cancellation of certificates and limited permits.

(a) A certificate may be issued by an inspector [4] for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.99–10; or

(ii) Based on inspection of the premises of origin, the premises are free from the sapote fruit fly; or

(iii) Based on inspection of the regulated article, the regulated article is free of sapote fruit flies; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or will be completely enclosed by a covering adequate to prevent access by the sapote fruit fly; and

(3) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714)[5] to prevent the spread of the sapote fruit fly; and

[3] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

[4] Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the McAllen Work Station, Federal Building Suite 119, 320 North Main, McAllen, TX 78501–4699, or the APHIS Web site at *http://www.aphis.usda.gov/travel/aqi.html.*

[5] Section 414 of the Plant Protection Act (7 U.S.C. 7714) provides that the Secretary of Agriculture

Continued

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector[6] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the sapote fruit fly because life stages of the sapote fruit fly will be destroyed by the specified handling, processing, or utilization;

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the sapote fruit fly; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for the interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article after an inspector has determined that the regulated article is eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article after an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate or limited permit has not complied with all conditions in this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0222)

§ 301.99–6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person is aware of this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.[7]

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, to the Administrator, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.99–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.99–5(c)) who desires a certificate or limited permit to move a regulated article interstate must notify an inspector[8] as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.99–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier or the carrier's representative to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

(Approved by the Office of Management and Budget under control number 0579–0222)

§ 301.99–9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

§ 301.99–10 Treatments.

Treatment schedules listed in the Plant Protection and Quarantine Treatment Manual to destroy the sapote fruit fly are authorized for use on regulated articles. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see

may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to destroy or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

[6] See footnote 4 to § 301.99–5(a).

[7] Compliance agreement forms are available without charge from the McAllen Work Station, Federal Building Suite 119, 320 North Main, McAllen, TX 78501–4699, and from local Plant Protection and Quarantine offices, which are listed in telephone directories.

[8] See footnote 4 to § 301.99–5(a).

§ 300.1 of this chapter, ''Plant Protection and Quarantine Treatment Manual.'' The following treatments also may be used for the regulated articles indicated:

(a) *Soil within the dripline of plants that are producing or have produced the fruits and vegetables listed in § 301.99–2(a) of this subpart.* Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the dripline with sufficient water to wet the soil to at least a depth of ½ inch.

(b) *Citrus fruits.* Regulated citrus fruits originating inside the quarantined area that are to be moved outside the quarantined area may be treated with methyl bromide fumigation in APHIS-approved chambers as an alternative to treating the fruits as provided in the Plant Protection and Quarantine Treatment Manual. Exposure period for this treatment is 2 hours.[9] Fruit pulp temperature must be between 21.1 °C and 29.4 °C (70 °F and 85 °F). This temperature requirement refers to fruit pulp only and not to air temperature within the chamber. Fruit taken from a cooling room may have to be pre-warmed before fumigation is attempted. To determine fruit pulp temperature, stab several fruit to the center with a suitable thermometer that reads at least in whole degrees (F or C). The lowest temperature should be used, not the average. The methyl bromide dosage is set at a rate of 2.5 pounds of 100 percent pure, type ''Q'' (for quarantine use only) methyl bromide per 1,000 cubic feet of chamber space.[10] However, if, prior to treatment, representative sampling reveals a level of infestation greater than 0.5 percent for the lot, then the fruit is ineligible for treatment.

(c) *Premises.* Fields, groves, or areas that are located within a quarantined area but outside the infested core area and that produce regulated articles may receive regular treatments with either malathion or spinosad bait spray as an alternative to treating the regulated articles with methyl bromide fumigation or those treatments provided in the Plant Protection and Quarantine Treatment Manual. These treatments must take place at 6-to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for development of sapote fruit fly egg and larvae. Determination of the time period must be based on the day degrees model for sapote fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

Done in Washington, DC, this 2nd day of May 2003 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–11438 Filed 5–7–03; 8:45 am]

BILLING CODE 3410–34–P

[9] To enhance equal concentrations of methyl bromide throughout the chamber, a fan should be placed near the point of gas introduction, and allowed to run for at least 15 minutes.

[10] Dosage is based upon chamber volume, not the volume of the fruit being treated. Fruit should be in cartons approved for fumigation. Cartons must be placed on pallets. There should be an air space of at least 1 foot between adjacent pallet loads; at least 1 foot between chamber walls and the nearest carton of fruit; and at least 2 feet between the height of the stack and the ceiling of the chamber. The compressed liquid methyl bromide inside the cylinder must be put through a volatilizer prior to injection into the chamber. Water temperature in the volatilizer must never fall below 65.6 °C (150 °F) at any time during gas injection.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–114–2]

Imported Fire Ant; Additions to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the imported fire ant regulations by designating as quarantined areas all or portions of six counties in South Carolina and nine counties in Tennessee and restricting the interstate movement of regulated articles from those areas. This interim rule was necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, Imported Fire Ant Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective January 30, 2003, and published in the **Federal Register** on February 5, 2003 (68 FR 5794–5796, Docket No. 02–114–1), we amended the imported fire ant regulations contained in 7 CFR 301.81 through 301.81–10 by adding all or portions of six counties in South Carolina and nine counties in Tennessee to the list of quarantined areas in § 301.81–3(e). As a result of that interim rule, the interstate movement of regulated articles from these areas is restricted.

Comments on the interim rule were required to be received on or before April 7, 2003. We received two comments by that date. The comments were from private citizens. Both commenters generally supported the interim rule. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 68 FR 5794–5796 on February 5, 2003.

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, 7754, and 7760; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 2nd day of May 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–11437 Filed 5–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–23–AD; Amendment 39–13143; AD 2003–09–14]

RIN 2120–AA64

Airworthiness Directives; General Electric CF34–8C1 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to General Electric (GE) CF34–8C1 turbofan engines. This amendment requires replacing combustion chamber assemblies, part number (P/N) 4126T87G04, before accumulating a new reduced cyclic life limit. This amendment is prompted by stress and life analysis conducted by GE. The actions specified by this AD are intended to prevent rupture of the combustion chamber assembly and possible engine fire.

DATES: Effective June 12, 2003.

ADDRESSES: Information regarding this action may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7148; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to GE CF34–8C1 turbofan engines was published in the **Federal Register** on February 7, 2003, (68 FR 6379). That action proposed to require replacing combustion chamber assemblies, P/N 4126T87G04, before accumulating a new reduced cyclic life limit.

Comments

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

One commenter requests that the combustion chamber assembly life be reduced to 25,800 cycles-since-new (CSN) from the proposed 28,000 CSN. The commenter states that this limit is specified in the GE CF34–8C1 Engine Maintenance Manual life limits section.

The FAA does not agree. The 28,000 life limit is the correct life limit approved by the FAA for combustion chamber assembly, P/N 4126T87G04. The GE manual incorrectly lists the lower life limit. That limit was submitted by GE for FAA approval in December, 2001. Subsequently, GE submitted a request to amend the cycle life limit to 28,000 CSN and the FAA approved it in March, 2002.

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

Economic Analysis

There are approximately 115 GE CF34–8C1 turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 75 engines are installed on airplanes of U.S. registry. The FAA also estimates that it would take approximately 24 work hours per engine to perform the actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $75,000 per engine. Based on these figures and the cost of lost life of 9,800 cycles-since-new per engine, the total cost of the AD to U.S. operators is estimated to be $1,600,000.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–09–14 General Electric: Amendment 39–13143. Docket No. 2002–NE–23–AD.

Applicability: This airworthiness directive (AD) is applicable to General Electric (GE) CF34–8C1 turbofan engines with combustion chamber assembly, part number (P/N) 4126T87G04, installed. These engines are installed on, but not limited to Bombardier Inc. Model CL–600–2C10 (CRJ–700 & 701) airplanes.

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

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

To prevent rupture of the combustion chamber assembly and possible engine fire, do the following:

(a) Replace combustion chamber assembly, P/N 4126T87G04, at or before the combustion chamber assembly accumulates 28,000 cycles-since-new (CSN).

(b) After the effective date of this AD, do not install any combustion chamber assembly, P/N 4126T87G04, that exceeds 28,000 CSN.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate

FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

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

Effective Date

(d) This amendment becomes effective on June 12, 2003.

Issued in Burlington, Massachusetts, on May 1, 2003.

Francis A. Favara,

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

[FR Doc. 03–11266 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 020718172–3062–03; I. D. 051402C]

RIN 0648–AQ08

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures Correction

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

ACTION: Correcting amendments.

SUMMARY: This final rule corrects the regulatory text of the final rule published January 2, 2003, implementing Steller sea lion protection measures for the Alaska groundfish fishery.

DATES: Effective May 7, 2003.

ADDRESSES: Copies of the Supplemental Environmental Impact Statement on Steller Sea Lion Protection Measures in the Federal Groundfish Fisheries Off Alaska (SEIS), including the 2001 biological opinion (2001 BiOp) and regulatory impact review may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Durall. The SEIS is also available on the NMFS Alaska Region home page at http://www.fakr.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, NMFS, 907–586–7228 or e-mail at melanie.brown@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

A final rule published January 2, 2003 (68 FR 204), implementing Steller sea lion protection measures for the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and the Gulf of Alaska (GOA), contains errors in its paragraph designations, cross-references, regulatory text, and tables which are corrected by this action.

Corrections to the Office of Management and Budget (OMB) Control Numbers Table

Two corrections are needed in the OMB control number references in the table at 15 CFR 902.1(b). The OMB control number assigned to § 679.20(a)(8)(iii) is incorrect. Also, the table is missing an OMB control number and corresponding paragraph that applies to the Steller sea lion protection measures. This action corrects the number assigned to § 679.20(a)(8)(iii) to read ''-0206''. OMB control number ''-0269'' that incorrectly was applied to § 679.20(a)(8)(iii) in the final rule is properly assigned to § 679.5(n)(2)(iii), which is added to the table with this action. This correction will accurately display the OMB control numbers for these collection-of-information approvals, as required by the Paperwork Reduction Act.

Corrections to the Regulatory Text

A number of corrections to the final rule for the Steller sea lion protection measures are needed for consistency with the final rule for Amendments 61/61/13/8 implementing the American Fisheries Act (AFA) (67 FR 79692, December 30, 2002, effective January 29, 2003). The AFA final rule at § 679.20(a)(5)(i)(A) and (a)(5)(ii) describes the Bering Sea subarea and Aleutian Islands subarea and Bogoslof district pollock AFA allocations, respectively. However, the Steller sea lion protection measures final rule provisions describing the seasonal apportionment of pollock in the BSAI and GOA also were codified at § 679.20(a)(5)(i)(A) and (a)(5)(ii)(B). This correction adds a new paragraph § 679.20(a)(5)(i)(B) describing the Steller sea lion protection measures seasonal apportionment of pollock in the Bering sea subarea. Section 679.20(a)(5)(i)(B) in the final rule regarding the Steller sea lion conservation area harvest limit is also redesignated as § 679.20(a)(5)(i)(C) to ensure proper paragraph designations. The seasonal apportionments for the GOA pollock fishery were codified by the AFA final rule at § 679.20(a)(5)(iii); therefore, no additional changes are needed in the Steller sea lion protection measures final rule for the GOA pollock seasonal apportionments. Cross-references in § 679.22(a)(7) to the redesignated paragraph § 679.20(a)(5)(i)(C) also are corrected. This correction results in no substantive changes to the requirements of the AFA or the Steller sea lion protection measures.

In addition, the Steller sea lion protection measures final rule contains cross-references to § 679.20(a)(6)(ii) and (iii) at § 679.20(b)(2)(i) and (ii). These cross-referenced paragraphs were renumbered as (a)(6)(i) and (a)(6)(ii), respectively, when the AFA final rule was published. This action corrects these cross-references in § 679.20(b)(2)(i) and (ii) to § 679.20(a)(6)(i) and (ii). This correction does not substantively change the requirements of either the final rule for the AFA or the Steller sea lion protection measures final rule.

Table 4 in 50 CFR part 679 specifies closures to directed fishing for pollock with trawl gear around identified Steller sea lion rookeries and haulouts in the Gulf of Alaska, the Bering Sea and the Aleutian Islands. The Steller sea lion protection measures final rule incorrectly specified the closed areas around Uliaga and Kagamil haulouts. Table 4 currently specifies a 10 nm closure around each of these haulouts (68 FR 218, January 2, 2003). Although these 10 nm closures are correctly specified for the waters within the Bering Sea subarea around these haulouts, Table 4 should have closed all of the Steller sea lion critical habitat around these haulouts that extends west of 170 degrees W. longitude into the Aleutian Islands subarea. In the proposed rule for this amendment, NMFS announced that directed fishing for pollock inside critical habitat in the Aleutian Islands subarea would be prohibited (67 FR 56703, column 1, September 4, 2002). Steller sea lion critical habitat includes an aquatic zone that extends 20 nm seaward from Uliaga and Kagamil haulouts (50 CFR 226.202(a), Table 2). Therefore, this action corrects Table 4 in 50 CFR part 679 by closing the waters of the Aleutian Islands subarea that lie within 20 nm of Uliaga and Kagamil haulouts to directed fishing for pollock with trawl gear.

Table 5 in 50 CFR part 679 specifies closures to directed fishing for Pacific cod with trawl gear, hook-and-line gear, and pot gear around identified Steller sea lion rookeries and haulouts in the Gulf of Alaska, the Bering Sea, and the Aleutian Islands. The final rule resulted in several errors that require correction.

First, Table 5 currently specifies closures to directed fishing for Pacific cod with hook-and-line gear and pot gear within the waters around Uliaga and Kagamil haulouts in the Bogoslof foraging area (68 FR 225–26, January 2, 2003). Although these haulouts are located in the Bogoslof foraging area, the critical habitat designated around these haulouts extends west beyond 170 degrees W. longitude, the western boundary of the Bogoslof foraging area (50 CFR 226.202(a), Table 2). Table 5 should have closed all of the Steller sea lion critical habitat around these haulouts that lies between 170 degrees W. longitude and 173 degrees W. longitude as well. The preamble to the proposed rule implementing the Steller sea lion protection measures explained that hook-and-line and pot vessels would be prohibited from directed fishing for Pacific cod in critical habitat east of 173 degrees W. longitude to the western boundary of the Bogslof foraging area (67 FR 56703, column 2, September 4, 2002). Therefore, NMFS corrects Table 5 in 50 CFR part 679 by closing the waters that lie within 20 nm of Uliaga and Kagamil haulouts to directed fishing for Pacific cod with hook-and-line and pot gear.

Second, Table 5 currently specifies a closure to directed fishing for Pacific cod with hook-and-line gear within 10 nm in the waters around Chuginadak haulout (68 FR 225, January 2, 2003). Although Chuginadak is located in the Gulf of Alaska, the critical habitat designated around this haulout extends west beyond 170 degrees W. longitude, the eastern boundary of the Aleutian Islands subarea (50 CFR section 226.202(a), Table 2). For the reason stated above, this critical habitat should have been closed to fishing for Pacific cod with hook-and-line gear as well. Therefore, NMFS corrects Table 5 in 50 CFR part 679 by prohibiting directed fishing for Pacific cod with hook-and-line gear in waters west of 170 degrees W. longitude that lie within 20 nm of Chuginadak haulout. Table 5 retains the current 10 nm closure to directed fishing for Pacific cod with hook-and-line gear around Chuginadak in the Gulf of Alaska.

Third, Table 5 currently specifies no closures to directed fishing for Pacific cod with hook-and-line gear or pot gear around Marmot Island rookery in the Gulf of Alaska (68 FR 229, January 2, 2003). However, the proposed rule for this amendment announced that directed fishing for Pacific cod with hook-and-line gear or pot gear around Gulf of Alaska rookeries would be prohibited (67 FR 56704, column 2, September 4, 2002). The Steller sea lion protection measures analyzed in the 2001 BiOp and in the SEIS specified 10 nm closures to hook-and-line and pot gear fishing around Marmot Island, and these closure were implemented in 2002 by emergency interim rule (67 FR 956, January 8, 2002). Therefore, NMFS corrects Table 5 in 50 CFR part 679 by closing the waters that lie within 10 nm of Marmot Island rookery to directed fishing for Pacific cod with hook-and-line or pot gear.

Finally, the closure around Tanaga I./Bumpy Pt. for the Aleutian Islands subarea Pacific cod trawl fishery in Table 5 is also corrected. Directed fishing for Pacific cod using trawl gear should have been prohibited in the Harvest Limit Area (HLA) during the Atka mackerel HLA directed fishery (§ 679.22(a)(8)(iv)). A portion of the 20 nm critical habitat area surrounding Tanaga I./Bumpy Pt. extends west of 178° W longitude, and this portion of water, by definition, is part of the HLA (§ 679.2). Therefore, the portion of critical habitat for Tanaga I./Bumpy Pt. that lies west of 178° W longitude should have been closed to directed fishing for Pacific cod with trawl gear during the Atka mackerel HLA directed fishery. Table 5 of the final rule did not describe this portion of critical habitat associated with Tanaga I./Bumpy Pt. as being part of the HLA, although the proposed rule clearly announced that this portion of critical habitat would be closed too, until the Atka mackerel HLA fishery is completed (67 FR 56703, column 2, September 4, 2002). A footnote is added to Tanaga I./Bumpy Pt. explaining the closure around this site. Because haulout sites located east of 178° W longitude are closed to 3 nm to directed fishing for Pacific cod with trawl gear, the no-fishing zone in column 7 of Table 5 is corrected to show 3 nm and 20 nm closures that apply around the Tanaga I./Bumpy Pt. haulout.

Table 6 of 50 CFR part 679 specifies closures to directed fishing for Atka mackerel with trawl gear near identified Steller sea lion rookeries and haulouts in the BSAI. The final rule included two errors in Table 6 that require correction. First, footnote 4 to Table 6 was inadvertently omitted from the site Tanaga I./Bumpy Pt. in the final rule. This footnote was included in the emergency interim rule implementing the Steller sea lion protection measures in 2002 (67 FR 956, January 8, 2002). The footnote explains the closure around this site and is added to the site name with this correction. For the same reasons as described above for the Pacific cod trawl fishery, footnote 4 is also corrected to specify that waters within 20 nm of Tanaga I./Bumpy Pt. and west of 178° W longitude are closed as part of the HLA, as defined in § 679.2.

Second, footnote 7 to Table 6 is corrected to further describe the 10 nm and 20 nm closures around Gramp Rock. The 20 nm closure for Gramp Rock should apply to waters located east of 178° W longitude, and the 10 nm closure for Gramp Rock should apply to waters located west of 178° W longitude. Gramp Rock should be closed to directed fishing for Atka mackerel using trawl gear in waters within 20 nm and west of 178° W longitude after the closure of the Atka mackerel HLA directed fishery. This action corrects the footnote accordingly.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this action is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this action is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. No relevant Federal rules exist that may duplicate, overlap, or conflict with this action.

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

A formal section 7 consultation under the Endangered Species Act (ESA) was initiated for the Steller sea lion protection measures under the fishery management plans for the groundfish fisheries of the BSAI and the GOA. In a biological opinion dated October 19, 2001, (2001 BiOp), the Director of the Office of Protected Resources determined that fishing activities conducted under the Steller sea lion protection measures implemented by the final rule (68 FR 204, January 2, 2003) are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. This correction fully implements the Steller sea lion protection measures analyzed in the 2001 BiOp and approved by the Secretary of Commerce.

On December 18, 2002, the United States District Court for the Western District of Washington remanded to NMFS the 2001 BiOp for the groundfish fisheries managed pursuant to the Steller sea lion protection measures published on January 2, 2003 (68 FR 204). *Greenpeace, et al.* v. *National Marine Fisheries Service*, No. C98 492Z (W.D. Wash.). The Court held that the biological opinion's findings of no

jeopardy to the continued existence of endangered Steller sea lions and no adverse modification of their critical habitat were arbitrary and capricious. On December 30, 2002, the Court issued an Order declaring that the 2001 BiOp ''shall remain effective until June 30, 2003,'' while NMFS completes the remand. The response to the remand will evaluate the effects of fishing activities authorized pursuant to the final rule, as corrected by this action, on listed species and critical habitat.

The measures in this rule correct the regulatory text to reflect the proper and intended paragraph designations, cross-references, regulatory text and tables of the final rule published on January 2, 2003, in order to make the regulations consistent with NMFS' intent and current industry practice. The affected fishermen were already complying with such measures pursuant to an earlier rule. Additionally, on January 15, 2003, NOAA Fisheries Alaska Region posted maps depicting the correct closures on its official webpage for use by affected fishermen. As a result, this rule seeks to bring the published regulations into conformity with the status quo. Prior notice and an opportunity for public comment on the substance of these measures was provided by the September 4, 2002, proposed rule. All comments provided pursuant to that proposed rule were considered in the development of the January 2, 2003, final rule. An additional opportunity for public comment would perpetuate any confusion or lack of clarity that may exist as a result of the incorrect information in the January 2, 2003, final rule. Accordingly, the Assistant Administrator for Fisheries finds good cause to waive prior notice and opportunity for public comment pursuant to 5 U.S.C. 553(b)(B). Because the affected industry is already complying with the corrected measures, additional time is not required to allow them to come into compliance. Therefore, the Assistant Administrator for Fisheries also finds that there exists good cause to waive the requirement of a 30–day delay in the effective date of this rule pursuant to 5 U.S.C. 553(d)(3).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 1, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ Accordingly, 15 CFR part 902, chapter IX, and 50 CFR part 679, chapter VI are corrected by making the following correcting amendments:

15 CFR Chapter IX

PART 902 NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding in numerical order an entry for § 679.5(n)(2)(iii) and revising the entry for § 679.20 (a)(8)(iii) to read as follows:

§ 902.1 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648-)
* * * *	*
50 CFR	.....
* * * *	*
679.5(n)(2)(iii)	-0269
* * * *	*
679.20 (a)(8)(iii)	-0206
* * * *	*

50 CFR Chapter VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 57 Stat. 113; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106–554.

■ 2. In § 679.20, paragraph (a)(5)(i)(B) is redesignated as paragraph (a)(5)(i)(C), a new paragraph (a)(5)(i)(B) is added, and paragraph (b)(2)(i) and (ii) is revised to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(B) *BSAI seasonal allowances*--(*1*) *Inshore, catcher/processor, mothership, and CDQ components.* The portions of the BSAI area pollock directed fishing allowances allocated to each component under Sections 206(a) and 206(b) of the AFA will be divided into two seasonal allowances corresponding to the two fishing seasons set out at § 679.23(e)(2), as follows: A Season, 40 percent; B Season, 60 percent.

(*2*) *Inseason adjustments.* Within any fishing year, the Regional Administrator may add or subtract any under harvest or over harvest of a seasonal allowance for a component to the subsequent seasonal allowance for the component through notification published in the **Federal Register**.

* * * * *

(b) * * *

(2) * * *

(i) *Pollock inshore-offshore reapportionment.* Any amounts of the GOA reserve that are reapportioned to pollock as provided by paragraph (b) of this section must be apportioned for processing by the inshore component in the GOA and the offshore component in the GOA in the same proportions specified in paragraph (a)(6)(i) of this section.

(ii) *Pacific Cod inshore-offshore reapportionment.* Any amounts of the GOA reserve that are reapportioned to Pacific cod as provided by paragraph (b) of this section must be apportioned for processing by the inshore component in the GOA and the offshore component in the GOA in the same proportion specified in paragraph (a)(6)(ii) of this section.

* * * * *

■ 3. In § 679.22, paragraph (a)(7)(vii)(C) is revised to read as follows:

§ 679.22 Closures.

(a) * * *

(7) * * *

(vii) * * *

(C) *Criteria for closure* -- (*1*) *General.* The directed fishing closures identified in paragraph (a)(7)(vii)(A) of this section will take effect when the Regional Administrator determines that the harvest limit for pollock within the SCA, as specified in § 679.20(a)(5)(i)(C) is reached before April 1. The Regional Administrator shall prohibit directed fishing for pollock in the SCA by notification published in the **Federal Register**.

(2) *Inshore catcher vessels greater than 99 ft (30.2 m) LOA.* The Regional Administrator will prohibit directed fishing for pollock by vessels greater

than 99 ft (30.2 m) LOA, catching pollock for processing by the inshore component before reaching the inshore SCA harvest limit before April 1 to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA until April 1. The Regional Administrator will estimate how much of the inshore seasonal allowance is likely to be harvested by catcher vessels less than or equal to 99 ft (30.2 m) LOA and reserve a sufficient amount of the inshore SCA allowance to accommodate fishing by such vessels after the closure of the SCA to inshore vessels greater than 99 ft (30.2 m) LOA. The Regional Administrator will prohibit directed fishing for all inshore catcher vessels within the SCA when the harvest limit specified in § 679.20(a)(5)(i)(C) has been met before April 1.

* * * * *

■ 4. Tables 4, 5, and 6 to Part 679 are revised to read as follows:

BILLING CODE 3510–22–S

Table 4 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pollock Fisheries Restrictions

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20
St. Paul I./Sea Lion Rock	Bering Sea	57 06.00 N	170 17.50 W			3
St. Paul I./NE Pt.	Bering Sea	57 15.00 N	170 06.50 W			3
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			10
St. George I./Dalnoi Pt.	Bering Sea	56 36.00 N	169 46.00 W			3
St. George I./S Rookery	Bering Sea	56 33.50 N	169 40.00 W			3
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20
Attu I./Cape Wrangell	Aleutian I.	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	20
Agattu I./Gillon Pt.	Aleutian I.	52 24.13 N	173 21.31 E			20
Attu I./Chirikof Pt.	Aleutian I.	52 49.75 N	173 26.00 E			20
Agattu I./Cape Sabak	Aleutian I.	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	20
Alaid I.	Aleutian I.	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	20
Shemya I.	Aleutian I.	52 44.00 N	174 08.70 E			20
Buldir I.	Aleutian I.	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20
Kiska I./Cape St. Stephen	Aleutian I.	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	20
Kiska I./Sobaka & Vega	Aleutian I.	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	20
Kiska I./Lief Cove	Aleutian I.	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	20
Kiska I./Sirius Pt.	Aleutian I.	52 08.50 N	177 36.50 E			20
Tanadak I. (Kiska)	Aleutian I.	51 56.80 N	177 46.80 E			20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Segula I.	Aleutian I.	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	20
Ayugadak Point	Aleutian I.	51 45.36 N	178 24.30 E			20
Rat I./Krysi Pt.	Aleutian I.	51 49.98 N	178 12.35 E			20
Little Sitkin I.	Aleutian I.	51 59.30 N	178 29.80 E			20
Amchitka I./Column Rocks	Aleutian I.	51 32.32 N	178 49.28 E			20
Amchitka I./East Cape	Aleutian I.	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	20
Amchitka I./Cape Ivakin	Aleutian I.	51 24.46 N	179 24.21 E			20
Semisopochnoi/Petrel Pt.	Aleutian I.	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	20
Semisopochnoi I./Pochnoi Pt.	Aleutian I.	51 57.30 N	179 46.00 E			20
Amatignak I. Nitrof Pt.	Aleutian I.	51 13.00 N	179 07.80 W			20
Unalga & Dinkum Rocks	Aleutian I.	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	20
Ulak I./Hasgox Pt.	Aleutian I.	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	20
Kavalga I.	Aleutian I.	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	20
Tag I.	Aleutian I.	51 33.50 N	178 34.50 W			20
Ugidak I.	Aleutian I.	51 34.95 N	178 30.45 W			20
Gramp Rock	Aleutian I.	51 28.87 N	178 20.58 W			20
Tanaga I./Bumpy Pt.	Aleutian I.	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20
Bobrof I.	Aleutian I.	51 54.00 N	177 27.00 W			20
Kanaga I./Ship Rock	Aleutian I.	51 46.70 N	177 20.72 W			20
Kanaga I./North Cape	Aleutian I.	51 56.50 N	177 09.00 W			20
Adak I.	Aleutian I.	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	20
Little Tanaga Strait	Aleutian I.	51 49.09 N	176 13.90 W			20
Great Sitkin I.	Aleutian I.	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	20
Anagaksik I.	Aleutian I.	51 50.86 N	175 53.00 W			20
Kasatochi I.	Aleutian I.	52 11.11 N	175 31.00 W			20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Atka I./North Cape	Aleutian I.	52 24.20 N	174 17.80 W			20
Amlia I./Sviech. Harbor[11]	Aleutian I.	52 01.80 N	173 23.90 W			20
Sagigik I.[11]	Aleutian I.	52 00.50 N	173 09.30 W			20
Amlia I./East[11]	Aleutian I.	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	20
Tanadak I. (Amlia[11])	Aleutian I.	52 04.20 N	172 57.60 W			20
Agligadak I.[11]	Aleutian I.	52 06.09 N	172 54.23 W			20
Seguam I./Saddleridge Pt.[11]	Aleutian I.	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	20
Seguam I./Finch Pt.	Aleutian I.	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	20
Seguam I./South Side	Aleutian I.	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	20
Amukta I. & Rocks	Aleutian I.	52 27.25 N	171 17.90 W			20
Chagulak I.	Aleutian I.	52 34.00 N	171 10.50 W			20
Yunaska I.	Aleutian I.	52 41.40 N	170 36.35 W			20
Uliaga[3]	Bering Sea	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	20,10
Chuginadak	Gulf of Alaska	52 46.70 N	169 41.90 W			20
Kagamil[3]	Bering Sea	53 02.10 N	169 41.00 W			20,10
Samalga	Gulf of Alaska	52 46.00 N	169 15.00 W			20
Adugak I.[3]	Bering Sea	52 54.70 N	169 10.50 W			10
Umnak I./Cape Aslik[3]	Bering Sea	53 25.00 N	168 24.50 W			BA
Ogchul I.	Gulf of Alaska	52 59.71 N	168 24.24 W			20
Bogoslof I./Fire I.[3]	Bering Sea	53 55.69 N	168 02.05 W			BA
Polivnoi Rock	Gulf of Alaska	53 15.96 N	167 57.99 W			20
Emerald I.	Gulf of Alaska	53 17.50 N	167 51.50 W			20
Unalaska/Cape Izigan	Gulf of Alaska	53 13.64 N	167 39.37 W			20
Unalaska/Bishop Pt.[9]	Bering Sea	53 58.40 N	166 57.50 W			10
Akutan I./Reef-lava[9]	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Unalaska I./Cape Sedanka[6]	Gulf of Alaska	53 50.50 N	166 05.00 W			20
Old Man Rocks[6]	Gulf of Alaska	53 52.20 N	166 04.90 W			20
Akutan I./Cape Morgan[6]	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20
Akun I./Billings Head[9]	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10
Rootok[6]	Gulf of Alaska	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20
Tanginak I.[6]	Gulf of Alaska	54 12.00 N	165 19.40 W			20
Tigalda/Rocks NE[6]	Gulf of Alaska	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20
Unimak/Cape Sarichef[9]	Bering Sea	54 34.30 N	164 56.80 W			10
Aiktak[6]	Gulf of Alaska	54 10.99 N	164 51.15 W			20
Ugamak I.[6]	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20
Round (GOA)[6]	Gulf of Alaska	54 12.05 N	164 46.60 W			20
Sea Lion Rock (Amak)[9]	Bering Sea	55 27.82 N	163 12.10 W			10
Amak I. And rocks[9]	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10
Bird I.	Gulf of Alaska	54 40.00 N	163 17.2 W			10
Caton I.	Gulf of Alaska	54 22.70 N	162 21.30 W			3
South Rocks	Gulf of Alaska	54 18.14 N	162 41.3 W			10
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			10
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			10
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			3
Sushilnoi Rocks	Gulf of Alaska	54 49.30 N	161 42.73 W			10
Olga Rocks	Gulf of Alaska	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10
Jude I.	Gulf of Alaska	55 15.75 N	161 06.27 W			20
Sea Lion Rocks (Shumagins)	Gulf of Alaska	55 04.70 N	160 31.04 W			3
Nagai I./Mountain Pt.	Gulf of Alaska	54 54.20 N	160 15.40 W	54 56.00 N	160 15.00 W	3
The Whaleback	Gulf of Alaska	55 16.82 N	160 05.04 W			3

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	20
Castle Rock	Gulf of Alaska	55 16.47 N	159 29.77 W			3
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			20
Spitz I.	Gulf of Alaska	55 46.60 N	158 53.90 W			3
Mitrofania	Gulf of Alaska	55 50.20 N	158 41.90 W			3
Kak	Gulf of Alaska	56 17.30 N	157 50.10 W			20
Lighthouse Rocks	Gulf of Alaska	55 46.79 N	157 24.89 W			20
Sutwik I.	Gulf of Alaska	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	55 00.30 N	156 41.60 W	20
Nagai Rocks	Gulf of Alaska	55 49.80 N	155 47.50 W			20
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20
Puale Bay	Gulf of Alaska	57 40.60 N	155 23.10 W			10
Kodiak/Cape Ikolik	Gulf of Alaska	57 17.20 N	154 47.50 W			3
Takli I.	Gulf of Alaska	58 01.75 N	154 31.25 W			10
Cape Kuliak	Gulf of Alaska	58 08.00 N	154 12.50 W			10
Cape Gull	Gulf of Alaska	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10
Kodiak/Cape Ugat	Gulf of Alaska	57 52.41 N	153 50.97 W			10
Sitkinak/Cape Sitkinak	Gulf of Alaska	56 34.30 N	153 50.96 W			10
Shakun Rock	Gulf of Alaska	58 32.80 N	153 41.50 W			10
Twoheaded I.	Gulf of Alaska	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10
Cape Douglas (Shaw I.)	Gulf of Alaska	59 00.00 N	153 22.50 W			10
Kodiak/Cape Barnabas	Gulf of Alaska	57 10.20 N	152 53.05 W			3
Kodiak/Gull Point[4]	Gulf of Alaska	57 21.45 N	152 36.30 W			10, 3
Latax Rocks	Gulf of Alaska	58 40.10 N	152 31.30 W			10
Ushagat I./SW	Gulf of Alaska	58 54.75 N	152 22.20 W			10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Ugak I.[4]	Gulf of Alaska	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3
Sea Otter I.	Gulf of Alaska	58 31.15 N	152 13.30 W			10
Long I.	Gulf of Alaska	57 46.82 N	152 12.90 W			10
Sud I.	Gulf of Alaska	58 54.00 N	152 12.50 W			10
Kodiak/Cape Chiniak	Gulf of Alaska	57 37.90 N	152 08.25 W			10
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			20
Sea Lion Rocks (Marmot)	Gulf of Alaska	58 20.53 N	151 48.83 W			10
Marmot I.[5]	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20
Nagahut Rocks	Gulf of Alaska	59 06.00 N	151 46.30 W			10
Perl	Gulf of Alaska	59 05.75 N	151 39.75 W			10
Gore Point	Gulf of Alaska	59 12.00 N	150 58.00 W			10
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20
Steep Point	Gulf of Alaska	59 29.05 N	150 15.40 W			10
Seal Rocks (Kenai)	Gulf of Alaska	59 31.20 N	149 37.50 W			10
Chiswell Islands	Gulf of Alaska	59 36.00 N	149 34.00 W			10
Rugged Island	Gulf of Alaska	59 50.00 N	149 23.10 W	59 51.00 N	149 24.70 W	10
Point Elrington[7, 10]	Gulf of Alaska	59 56.00 N	148 15.20 W			20
Perry I.[7]	Gulf of Alaska	60 44.00 N	147 54.60 W			
The Needle[7]	Gulf of Alaska	60 06.64 N	147 36.17 W			
Point Eleanor[7]	Gulf of Alaska	60 35.00 N	147 34.00 W			
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			20
Glacier Island[7]	Gulf of Alaska	60 51.30 N	147 14.50 W			
Seal Rocks (Cordova)[10]	Gulf of Alaska	60 09.78 N	146 50.30 W			20
Cape Hinchinbrook[10]	Gulf of Alaska	60 14.00 N	146 38.50 W			20
Middleton I.	Gulf of Alaska	59 28.30 N	146 18.80 W			10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Hook Point[10]	Gulf of Alaska	60 20.00 N	146 15.60 W			20
Cape St. Elias	Gulf of Alaska	59 47.50 N	144 36.20 W			20

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in 50 CFR 679.22(a)(7)(iv), (a)(8)(ii) and (b)(2)(ii).

[3] This site lies within the Bogoslof area (BA). The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00' N/170°00' W, and 55°00' N/168°11'4.75" W. Closure to directed fishing for pollock around Uliaga and Kagamil is 20 nm for waters west of 170°W long. and 10 nm for waters east of 170°W long.

[4] The trawl closure between 0 nm to 10 nm is effective from January 20 through May 31. Trawl closure between 0 nm to 3 nm is effective from August 25 through November 1.

[5] Trawl closure between 0 nm to 15 nm is effective from January 20 through May 31. Trawl closure between 0 nm to 20 nm is effective from August 25 to November 1.

[6] Restriction area includes only waters of the Gulf of Alaska Area.

[7] Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.

[8] No-fishing zones are the waters between 0 nm and the nm specified in column 7 around each site and within the BA.

[9] This site is located in the Bering Sea Pollock Restriction Area, closed to pollock trawling during the A season. This area consists of all waters of the Bering Sea subarea south of a line connecting the points 163° 0'00" W long./55°46'30" N lat., 165°08'00" W long./54°42'9" N lat., 165°40'00" long./54°26'30" N lat., 166°12'00" W long./54°18'40" N lat., and 167°0'00" W long./54°8'50" N lat.

[10] The 20 nm closure around this site is effective in federal waters outside of State of Alaska waters of Prince William Sound.

[11] Some or all of the restricted area is located in the Seguam Foraging area (SFA) which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long.

Table 5 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pacific Cod Fisheries Restrictions

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
St. Lawrence I./S Punuk I.	BS	63 04.00 N	168 51.00 W			20	20	20
St. Lawrence I./SW Cape	BS	63 18.00 N	171 26.00 W			20	20	20
Hall I.	BS	60 37.00 N	173 00.00 W			20	20	20
St. Paul I./Sea Lion Rock	BS	57 06.00 N	170 17.50 W			3	3	3
St. Paul I./NE Pt.	BS	57 15.00 N	170 06.50 W			3	3	3
Walrus I. (Pribilofs)	BS	57 11.00 N	169 56.00 W			10	3	3
St George I./Dalnoi Pt.	BS	56 36.00 N	169 46.00 W			3	3	3
St. George I./S. Rookery	BS	56 33.50 N	169 40.00 W			3	3	3
Cape Newenham	BS	58 39.00 N	162 10.50 W			20	20	20
Round (Walrus Islands)	BS	58 36.00 N	159 58.00 W			20	20	20
Attu I./Cape Wrangell[11]	AI	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	20, 10	3	3
Agattu I./Gillon Pt.[11]	AI	52 24.13 N	173 21.31 E			20, 10	3	3
Attu I./Chirikof Pt.[11]	AI	52 49.75 N	173 26.00 E			20, 3		
Agattu I./Cape Sabak[11]	AI	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	20, 10	3	3
Alaid I.[11]	AI	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	20, 3		
Shemya I.[11]	AI	52 44.00 N	174 08.70 E			20, 3		
Buldir I.[11]	AI	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20, 10	10	10
Kiska I./Cape St. Stephen[11]	AI	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	20, 10	3	3
Kiska I. Sobaka & Vega[11]	AI	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	20, 3		
Kiska I./Lief Cove[11]	AI	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	20, 10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Kiska I./Sirius Pt.[11]	AI	52 08.50 N	177 36.50 E			20, 3		
Tanadak I. (Kiska)[11]	AI	51 56.80 N	177 46.80 E			20, 3		
Segula I.[11]	AI	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	20, 3		
Ayugadak Point[11]	AI	51 45.36 N	178 24.30 E			20, 10	3	3
Rat I./Krysi Pt.[11]	AI	51 49.98 N	178 12.35 E			20, 3		
Little Sitkin I.[11]	AI	51 59.30 N	178 29.80 E			20, 3		
Amchitka I./Column[11]	AI	51 32.32 N	178 49.28 E			20, 10	3	3
Amchitka I./East Cape[11]	AI	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	20,10	3	3
Amchitka I./Cape Ivakin[11]	AI	51 24.46 N	179 24.21 E			20, 3		
Semisopochnoi/Petrel Pt.[11]	AI	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	20, 10	3	3
Semisopochnoi I./Pochnoi Pt.[11]	AI	51 57.30 N	179 46.00 E			20, 10	3	3
Amatignak I./Nitrof Pt.[11]	AI	51 13.00 N	179 07.80 W			20, 3		
Unalga & Dinkum Rocks[11]	AI	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	20, 3		
Ulak I./Hasgox Pt.[11]	AI	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	20, 10	3	3
Kavalga I.[11]	AI	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	20, 3		
Tag I.[11]	AI	51 33.50 N	178 34.50 W			20, 10	3	3
Ugidak I.[11]	AI	51 34.95 N	178 30.45 W			20, 3		
Gramp Rock[11]	AI	51 28.87 N	178 20.58 W			20, 10	3	3
Tanaga I./Bumpy Pt.[11]	AI	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20,3		
Bobrof I.	AI	51 54.00 N	177 27.00 W			3		
Kanaga I./Ship Rock	AI	51 46.70 N	177 20.72 W			3		
Kanaga I./North Cape	AI	51 56.50 N	177 09.00 W			3		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Adak I.	AI	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	10	3	3
Little Tanaga Strait	AI	51 49.09 N	176 13.90 W			3		
Great Sitkin I.	AI	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	3		
Anagaksik I.	AI	51 50.86 N	175 53.00 W			3		
Kasatochi I.	AI	52 11.11 N	175 31.00 W			10	3	3
Atka I./N. Cape	AI	52 24.20 N	174 17.80 W			3		
Amlia I./Sviech. Harbor[4]	AI	52 01.80 N	173 23.90 W			3		
Sagigik I.[4]	AI	52 00.50 N	173 09.30 W			3		
Amlia I./East[4]	AI	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	3	20	20
Tanadak I. (Amlia)[4]	AI	52 04.20 N	172 57.60 W			3	20	20
Agligadak I.[4]	AI	52 06.09 N	172 54.23 W			20	20	20
Seguam I./Saddleridge Pt.[4]	AI	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	10	20	20
Seguam I./Finch Pt.	AI	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	3	20	20
Seguam I./South Side	AI	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	3	20	20
Amukta I. & Rocks	AI	52 27.25 N	171 17.90 W			3	20	20
Chagulak I.	AI	52 34.00 N	171 10.50 W			3	20	20
Yunáska I.	AI	52 41.40 N	170 36.35 W			10	20	20
Uliaga[5, 14]	BS	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	10	20	20
Chuginadak[14]	GOA	52 46.70 N	169 41.90 W			20	20,10	20
Kagamil[5, 14]	BS	53 02.10 N	169 41.00 W			10	20	20
Samalga	GOA	52 46.00 N	169 15.00 W			20	10	20
Adugak I.[5]	BS	52 54.70 N	169 10.50 W			10	BA	BA
Umnak I./Cape Aslik[5]	BS	53 25.00 N	168 24.50 W			BA	BA	BA

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Ogchul I.	GOA	52 59.71 N	168 24.24 W			20	10	20
Bogoslof I./Fire I.[5]	BS	53 55.69 N	168 02.05 W			BA	BA	BA
Polivnoi Rock[9]	GOA	53 15.96 N	167 57.99 W			20	10	20
Emerald I.[13, 9]	GOA	53 17.50 N	167 51.50 W			20	10	20
Unalaska/Cape Izigan[9]	GOA	53 13.64 N	167 39.37 W			20	10	20
Unalaska/Bishop Pt.[6, 13]	BS	53 58.40 N	166 57.50 W			10	10	3
Akutan I./Reef-lava[6]	BS	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10	10	3
Unalaska I./Cape Sedanka[9]	GOA	53 50.50 N	166 05.00 W			20	10	20
Old Man Rocks[9]	GOA	53 52.20 N	166 04.90 W			20	10	20
Akutan I./Cape Morgan[9]	GOA	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20	10	20
Akun I./Billings Head	BS	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10	3	3
Rootok[9]	GOA	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20	10	20
Tanginak I.[9]	GOA	54 12.00 N	165 19.40 W			20	10	20
Tigalda/Rocks NE[9]	GOA	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20	10	20
Unimak/Cape Sarichef	BS	54 34.30 N	164 56.80 W			10	3	3
Aiktak[9]	GOA	54 10.99 N	164 51.15 W			20	10	20
Ugamak I.[9]	GOA	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20	10	20
Round (GOA)[9]	GOA	54 12.05 N	164 46.60 W			20	10	20
Sea Lion Rock (Amak)	BS	55 27.82 N	163 12.10 W			10	7	7
Amak I. And rocks	BS	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10	3	3
Bird I.	GOA	54 40.00 N	163 17.2 W			10		
Caton I.	GOA	54 22.70 N	162 21.30 W			3	3	3
South Rocks	GOA	54 18.14 N	162 41.3 W			10		
Clubbing Rocks (S)	GOA	54 41.98 N	162 26.7 W			10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Clubbing Rocks (N)	GOA	54 42.75 N	162 26.7 W			10	3	3
Pinnacle Rock	GOA	54 46.06 N	161 45.85 W			3	3	3
Sushilnoi Rocks	GOA	54 49.30 N	161 42.73 W			10		
Olga Rocks	GOA	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10		
Jude I.	GOA	55 15.75 N	161 06.27 W			20		
Sea Lion Rocks (Shumagins)	GOA	55 04.70 N	160 31.04 W			3	3	3
Nagai I./Mountain Pt.	GOA	54 54.20 N	160 15.40 W	54.56.00 N	160.15.00 W	3	3	3
The Whaleback	GOA	55 16.82 N	160 05.04 W			3	3	3
Chernabura I.	GOA	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	20	3	3
Castle Rock	GOA	55 16.47 N	159 29.77 W			3	3	3
Atkins I.	GOA	55 03.20 N	159 17.40 W			20	3	3
Spitz I.	GOA	55 46.60 N	158 53.90 W			3	3	3
Mitrofania	GOA	55 50.20 N	158 41.90 W			3	3	3
Kak	GOA	56 17.30 N	157 50.10 W			20	20	20
Lighthouse Rocks	GOA	55 46.79 N	157 24.89 W			20	20	20
Sutwik I.	GOA	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20	20	20
Chowiet I.	GOA	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	20	20	20
Nagai Rocks	GOA	55 49.80 N	155 47.50 W			20	20	20
Chirikof I.	GOA	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20	20	20
Puale Bay	GOA	57 40.60 N	155 23.10 W			10		
Kodiak/Cape Ikolik	GOA	57 17.20 N	154 47.50 W			3	3	3
Takli I.	GOA	58 01.75 N	154 31.25 W			10		
Cape Kuliak	GOA	58 08.00 N	154 12.50 W			10		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Cape Gull	GOA	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10		
Kodiak/Cape Ugat	GOA	57 52.41 N	153 50.97 W			10		
Sitkinak/Cape Sitkinak	GOA	56 34.30 N	153 50.96 W			10		
Shakun Rock	GOA	58 32.80 N	153 41.50 W			10		
Twoheaded I.	GOA	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10		
Cape Douglas (Shaw I.)	GOA	59 00.00 N	153 22.50 W			10		
Kodiak/Cape Barnabas	GOA	57 10.20 N	152 53.05 W			3	3	3
Kodiak/Gull Point[7]	GOA	57 21.45 N	152 36.30 W			10, 3		
Latax Rocks	GOA	58 40.10 N	152 31.30 W			10		
Ushagat I./SW	GOA	58 54.75	152 22.20 W			10		
Ugak I.[7]	GOA	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3		
Sea Otter I.	GOA	58 31.15 N	152 13.30 W			10		
Long I.	GOA	57 46.82 N	152 12.90 W			10		
Sud I.	GOA	58 54.00 N	152 12.50 W			10		
Kodiak/Cape Chiniak	GOA	57 37.90 N	152 08.25 W			10		
Sugarloaf I.	GOA	58 53.25 N	152 02.40 W			20	10	10
Sea Lion Rocks (Marmot)	GOA	58 20.53 N	151 48.83 W			10		
Marmot I.[8]	GOA	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20	10	10
Nagahut Rocks	GOA	59 06.00 N	151 46.30 W			10		
Perl	GOA	59 05.75 N	151 39.75 W			10		
Gore Point	GOA	59 12.00 N	150 58.00 W			10		
Outer (Pye) I.	GOA	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20	10	10
Steep Point	GOA	59 29.05 N	150 15.40 W			10		
Seal Rocks (Kenai)	GOA	59 31.20 N	149 37.50 W			10		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Chiswell Islands	GOA	59 36.00 N	149 34.00 W			10		
Rugged Island	GOA	59 50.00 N	149 23.10 W			10		
Point Elrington[10, 12]	GOA	59 56.00 N	148 15.20 W			20		
Perry I.[10]	GOA	60 44.00 N	147 54.60 W					
The Needle[10]	GOA	60 06.64 N	147 36.17 W					
Point Eleanor[10]	GOA	60 35.00 N	147 34.00 W					
Wooded I. (Fish I.)	GOA	59 52.90 N	147 20.65 W			20	3	3
Glacier Island[10]	GOA	60 51.30 N	147 14.50 W					
Seal Rocks (Cordova)[12]	GOA	60 09.78 N	146 50.30 W			20	3	3
Cape Hinchinbrook[12]	GOA	60 14.00 N	146 38.50 W			20		
Middleton I.	GOA	59 28.30 N	146 18.80 W			10		
Hook Point[12]	GOA	60 20.00 N	146 15.60 W			20		
Cape St. Elias	GOA	59 47.50 N	144 36.20 W			20		

BS = Bering Sea, AI = Aleutian Islands, GOA = Gulf of Alaska

[1]Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in 50 CFR 679.22(a)(7)(v), (a)(8)(iv) and (b)(2)(iii).

[3] No-fishing zones are the waters between 0 nm and the nm specified in columns 7, 8, and 9 around each site and within the Bogoslof area (BA) and the Seguam Foraging Area (SFA).

[4] Some or all of the restricted area is located in the SFA which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long. Amlia I./East, and Tanadak I. (Amlia) haulouts 20 nm hook-and-line and pot closures apply only to waters located east of 173° W longitude.

[5]This site lies within the BA which is closed to all gear types. The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W, and 55°00' N/168°11'4.75"

[6]Hook-and-line no-fishing zones apply only to vessels greater than or equal to 60 feet LOA in waters east of 167° W long. For Bishop Point the 10 nm closure west of 167° W. long. applies to all hook and line and jig vessels.
[7]The trawl closure between 0 nm to 10 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 3 nm is effective from September 1 through November 1.
[8] The trawl closure between 0 nm to 15 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 20 nm is effective from September 1 through November 1.
[9]Restriction area includes only waters of the Gulf of Alaska Area.
[10]Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.
[11]Directed fishing for Pacific cod using trawl gear is prohibited in the harvest limit area (HLA) as defined at § 679.2 until the HLA Atka mackerel directed fishery in the A or B seasons is completed. The 20 nm closure around Gramp Rock and Tanaga I./Bumpy Pt. applies only to waters west of 178°W long. and only during the HLA directed fishery. After closure of the Atka mackerel HLA directed fishery, directed fishing for Pacific cod using trawl gear is prohibited in the HLA between 0 nm to 10 nm of rookeries and between 0 nm to 3 nm of haulouts. Directed fishing for Pacific cod using trawl gear is prohibited between 0-3 nm of Tanaga I./Bumpy Pt.
[12] The 20 nm closure around this site is effective only in waters outside of the State of Alaska waters of Prince William Sound.
[13] See 50 CFR 679.22(a)(7)(i)(C) for exemptions for catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear between Bishop Point and Emerald Island closure areas.
[14]Trawl closure around this site is limited to waters east of 170°0'00" W long. Closure to hook-and-line fishing around Chuginadak is 20 nm for waters west of 170°W long. and 10 nm for waters east of 170°W long.

Table 6 to 50 CFR Part 679 Steller Sea Lion Protection Areas Atka Mackerel Fisheries Restrictions

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3] (nm)
		Latitude	Longitude	Latitude	Longitude	
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20
St. Paul I./Sea Lion Rock	Bering Sea	57 06.00 N	170 17.50 W			20
St. Paul I./NE Pt.	Bering Sea	57 15.00 N	170 06.50 W			20
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			20
St. George I./Dalnoi Pt.	Bering Sea	56 36.00 N	169 46.00 W			20
St. George I./S Rookery	Bering Sea	56 33.50 N	169 40.00 W			20
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20
Attu I./Cape Wrangell	Aleutian Islands	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	10
Agattu I./Gillon Pt.	Aleutian Islands	52 24.13 N	173 21.31 E			10
Attu I./Chirikof Pt.	Aleutian Islands	52 49.75 N	173 26.00 E			3
Agattu I./Cape Sabak	Aleutian Islands	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	10
Alaid I.	Aleutian Islands	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	3
Shemya I.	Aleutian Islands	52 44.00 N	174 08.70 E			3
Buldir I.	Aleutian Islands	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	15
Kiska I./Cape St. Stephen	Aleutian Islands	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	10
Kiska I./Sobaka & Vega	Aleutian Islands	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	3
Kiska I./Lief Cove	Aleutian Islands	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	10
Kiska I./Sirius Pt.	Aleutian Islands	52 08.50 N	177 36.50 E			3
Tanadak I. (Kiska)	Aleutian Islands	51 56.80 N	177 46.80 E			3

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3] (nm)
		Latitude	Longitude	Latitude	Longitude	
Segula I.	Aleutian Islands	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	3
Ayugadak Point	Aleutian Islands	51 45.36 N	178 24.30 E			10
Rat I./Krysi Pt.	Aleutian Islands	51 49.98 N	178 12.35 E			3
Little Sitkin I.	Aleutian Islands	51 59.30 N	178 29.80 E			3
Amchitka I./Column Rocks	Aleutian Islands	51 32.32 N	178 49.28 E			10
Amchitka I./East Cape	Aleutian Islands	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	10
Amchitka I./Cape Ivakin	Aleutian Islands	51 24.46 N	179 24.21 E			3
Semisopochnoi/Petrel Pt.	Aleutian Islands	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	10
Semisopochnoi I./Pochnoi Pt.	Aleutian Islands	51 57.30 N	179 46.00 E			10
Amatignak I. Nitrof Pt.	Aleutian Islands	51 13.00 N	179 07.80 W			3
Unalga & Dinkum Rocks	Aleutian Islands	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	3
Ulak I./Hasgox Pt.	Aleutian Islands	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	10
Kavalga I.	Aleutian Islands	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	3
Tag I.	Aleutian Islands	51 33.50 N	178 34.50 W			10
Ugidak I.	Aleutian Islands	51 34.95 N	178 30.45 W			3
Gramp Rock[7]	Aleutian Islands	51 28.87 N	178 20.58 W			10, 20
Tanaga I./Bumpy Pt.[4]	Aleutian Islands	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20
Bobrof I.	Aleutian Islands	51 54.00 N	177 27.00 W			20
Kanaga I./Ship Rock	Aleutian Islands	51 46.70 N	177 20.72 W			20
Kanaga I./North Cape	Aleutian Islands	51 56.50 N	177 09.00 W			20
Adak I.	Aleutian Islands	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	20
Little Tanaga Strait	Aleutian Islands	51 49.09 N	176 13.90 W			20
Great Sitkin I.	Aleutian Islands	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	20
Anagaksik I.	Aleutian Islands	51 50.86 N	175 53.00 W			20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3] (nm)
		Latitude	Longitude	Latitude	Longitude	
Kasatochi I.	Aleutian Islands	52 11.11 N	175 31.00 W			20
Atka I./North Cape	Aleutian Islands	52 24.20 N	174 17.80 W			20
Amlia I./Sviech. Harbor[5]	Aleutian Islands	52 01.80 N	173 23.90 W			20
Sagigik I.[5]	Aleutian Islands	52 00.50 N	173 09.30 W			20
Amlia I./East[5]	Aleutian Islands	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	20
Tanadak I. (Amlia)[5]	Aleutian Islands	52 04.20 N	172 57.60 W			20
Agligadak I.[5]	Aleutian Islands	52 06.09 N	172 54.23 W			20
Seguam I./Saddleridge Pt.[5]	Aleutian Islands	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	20
Seguam I./Finch Pt.[5]	Aleutian Islands	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	20
Seguam I./South Side[5]	Aleutian Islands	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	20
Amukta I. & Rocks	Aleutian Islands	52 27.25 N	171 17.90 W			20
Chagulak I.	Aleutian Islands	52 34.00 N	171 10.50 W			20
Yunaska I.	Aleutian Islands	52 41.40 N	170 36.35 W			20
Uliaga[6]	Bering Sea	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	20
Kagamil[6]	Bering Sea	53 02.10 N	169 41.00 W			20
Adugak I.[6]	Bering Sea	52 54.70 N	169 10.50 W			20
Umnak I./Cape Aslik[6]	Bering Sea	53 25.00 N	168 24.50 W			BA
Bogoslof I./Fire I.[6]	Bering Sea	53 55.69 N	168 02.05 W			BA
Unalaska/Bishop Pt.	Bering Sea	53 58.40 N	166 57.50 W			20
Akutan I./Reef-lava	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	20
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	20
Unimak/Cape Sarichef	Bering Sea	54 34.30 N	164 56.80 W			20
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			20
Amak I. And rocks	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	20

[1]Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates.

[2] Closures as stated in 50 CFR 679.22 (a)(7)(vi) and (a)(8)(v).

[3] No-fishing zones are the waters between 0 nm and the nm specified in column 7 around each site and within the Bogoslof area (BA).

[4] The 20 nm Atka mackerel fishery closure around the Tanaga I./Bumpy Pt. Rookery is established only for that portion of the area east of 178° W longitude. Waters located within 20 nm of Tanaga I./Bumpy Pt. and west of 178° W long. are including in the harvest limit area, as defined in §679.2.

[5] Some or all of the restricted area is located in the Seguam Foraging Area (SFA) which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long.

[6] This site lies in the BA, closed to all gear types. The BA consists of all waters of Area 518 described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W and 55°00'N/168°11'4.75" W.

[7]Directed fishing for Atka mackerel by vessels using trawl gear is prohibited in waters located a)0-20 nm seaward of Gramp Rock and east of 178°W long., and b)0-10 nm of Gramp Rock and west of 178°W long.

[FR Doc. 03–11374 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 4316]

Visas: Documentation of Immigrants—Victims of Terrorism

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Department's regulations concerning immigrant visas. Recent legislation, commonly known as the USA Patriot Act, permits certain victims of the September 11, 2001 terrorist attack to file petitions for classification as special immigrants. This rule implements these provisions by creating a new visa classification ''SP'' for these immigrants and sets forth the eligibility requirements for the issuance of an immigrant visa in that category.

DATES: *Effective date:* This interim rule is effective on May 8, 2003.

Comment date: The Department will consider written comments submitted on or before July 7, 2003.

ADDRESSES: Please submit comments to the Chief, Legislation and Regulations Division, Visa Services, Department of State, 20522–0106, e-mail *VisaRegs@state.gov,* or fax to (202) 663–3898.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522–0106, phone (202) 663–1206.

SUPPLEMENTARY INFORMATION:

What Is the Authority for This Rule?

On October 26, 2001, the President signed into law the ''Uniting and Strengthening America Act by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot) Act,'' Public Law 107–56. Section 421 of the USA Patriot Act provides special immigrant status for certain victims of the terrorist attack of September 11, 2001 who file petitions for classification under the Immigration and Nationality Act (INA) section 203(b)(4).

Who Is Entitled to the Special Immigrant ''SP'' Classification?

Principal Alien

An alien is entitled to classification as an ''SP'' special immigrant if the alien can demonstrate to the Attorney General that

(1) He or she is the beneficiary of a petition, filed on or before September 11, 2001, for classification as an immigrant under INA 203(a) or (b) or as a nonimmigrant under INA 101(a)(15)(K); or

(2) He or she is the beneficiary of a labor certification application filed on or before September 11, 2001.

Additionally, the alien must present evidence that the petition or labor certification application was revoked, terminated or rendered null, either before or after its approval, due directly to the attack of September 11, 2001, that resulted in the death or disability of the petitioner, beneficiary, or applicant; or caused loss of employment due to physical damage to, or destruction of, the business of the petitioner or the applicant.

Spouse or Child

The spouse or child of an alien who meets the description of a ''principal alien'' (whether the principal alien is living or deceased) may be classified as an ''SP'' if the familial relationship existed on September 10, 2001; and if the spouse or child is

(1) Accompanying the principal alien; or

(2) Following-to-join the principal alien no later than September 11, 2003. In the case of a deceased principal alien, the requirement for accompanying or following to join is disregarded.

Grandparent of an Orphan

The grandparent of a child may be classified as an ''SP'', if the child is left with no parents as a direct result of a terrorist attack on September 11, 2001, if either parent was a U.S. citizen, a U.S. national, or a lawful U.S. permanent resident on September 10, 2001. The grandparent must also demonstrate that he or she is coming to the U.S. to assume legal custody of the child.

What Evidence Must Be Presented To Show That the Alien Was the Victim of the September 11, 2001, Terrorist Attack?

To qualify for classification as an ''SP'' immigrant, the alien must demonstrate to the Secretary of Homeland Security that he or she is a ''victim of a specified terrorist activity'', defined in the USA Patriot Act as any terrorist activity conducted against the Government or the people of the United States on September 11, 2001. The INS is responsible for approval of the petition, and thus responsible for determining if the alien has presented satisfactory evidence that he or she is a victim of a September 11, 2001 terrorist attack.

Are Aliens in the ''SP'' Category Subject to the Grounds Visa Inadmissiblity?

Aliens in the ''SP'' are subject to all grounds of ineligibility except INA 212(a)(4).

How Will Aliens in the ''SP'' Category Be Assigned a Priority Date?

The Immigration and Naturalization (INS) will assign a priority date at the time the fourth preference petition is filed. Consular officers will issue visas in the chronological order in which the petitions were submitted to the INS. However, if the annual limit under INA 203 is met, the alien may use the priority date of the revoked petition.

How Is the Department Amending Its Regulation?

The Department is amending 22 CFR 42.32(d) by adding a new fourth preference classification paragraph (9) clarifying entitlement to special immigrant status under the USA Patriot Act. This rule authorizes consular officers to accord fourth preference employment-based special immigrant classification to certain victims of the September 11, 2001, terrorist attacks. As with other classes of fourth preference employment-based immigrants, the alien must be the beneficiary of an approved petition.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department's implementation of this regulation as an interim rule is based upon the ''good cause'' exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). As the amendment to the regulation simply implements without interpretation a legislative mandate that provides a benefit to aliens by extending special immigrant status to a specific class of aliens, the Department has determined that it is unnecessary to publish a proposed rule. In view of this benefit and since the amendment applies to visas made available in any fiscal year beginning immediately, the rule will be made effective immediately upon publication in the **Federal Register**.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule is not expected to have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of 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 section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million 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.

Executive Order 12866

Although this rule is being promulgated in conjunction with the Immigration and Naturalization Service, a domestic agency, the Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section (3)(f), Regulatory Planning and Review. Therefore, in accordance with the letter to the Department of State of February 4, 1994 from the Director of the Office of Management and Budget, it does not require review 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 the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements under the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 42

Aliens, Immigrants, Passports and visas.

■ For the reasons set forth in the preamble, the Department is amending the regulations at 22 CFR part 42 to read as follows:

PART 42—[AMENDED]

■ 1. The authority citation for part 42 is revised to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 107–56, sec. 421.

■ 2. Amend § 42.32(d) by adding a new paragraph (9) to read as follows:

§ 42.32 Employment-based preference immigrants.

* * * * *

(d) * * *

(9) Certain Victims of the September 11, 2001 terrorist attacks. (i) Entitlement to status. An alien shall be classifiable as a special immigrant under INA 203(b)(4) as specified in section 421 of Public Law 107–56, if:

(A) The consular officer has received a petition approved by the INS to accord such classification, or official notification of such an approval, and the consular officer is satisfied from the evidence presented that the alien is entitled to that classification; or

(B) The alien is the spouse or child of an alien so classified in paragraph (d)(9)(i) of this section and is accompanying or following to join the principal alien.

(ii) *Ineligibility exemption.* An alien classified under paragraph (d)(9)(i) of this section shall not be subject to the provisions of INA 212(a)(4).

(iii) *Priority date.* Aliens entitled to status under paragraph (d)(9)(i) of this section shall be assigned a priority date as of the date the petition was filed under INA 204 for classification under section INA 203(b)(4) and visas shall be issued in the chronological order of application submission. However, in the event that the annual limit for immigrants under INA 203 is reached, the alien may retain the earlier priority date of the petition that was revoked.

* * * * *

Dated: January 3, 2003.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 03–11222 Filed 5–7–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 140 and 646

[FHWA Docket No. FHWA–97–2681]

FHWA RIN 2125–AD86

Railroad-Highway Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA adopts as final an interim final rule that amends the regulation on railroad-highway projects and reimbursement for railroad work on Federal-aid highway projects. The purpose of adopting the interim final rule as final is to reflect the statutory changes brought about by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and to provide State transportation departments with clarification and more flexibility in implementing current law.

EFFECTIVE DATE: June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Rudolph Umbs, Office of Safety (HSA–1), (202) 366–2177, or Mr. Raymond Cuprill, Office of the Chief Counsel (HCC–30), (202) 366–0791. Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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Background

The FHWA published an interim final rule on parts 140 and 646, on August 27, 1997, at 62 FR 45326. Interested persons were invited to submit comments to FHWA Docket No. FHWA–97–2681. The interim final rule amended the

regulation on railroad/highway projects and reimbursement for railroad work on Federal-aid highway projects. The changes were made to conform these regulations to the changes brought about by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914). Additionally, the changes were to provide State transportation departments with clarification and more flexibility in implementing the current law. Other changes required railroads to submit final billings within one year following completion of the railroad work; remove the requirement of a State's certification that work is complete; remove the ''G'' Funds terminology; and increase the ceiling for lump sum agreements from $25,000 to $100,000. This interim final rule has been in effect since August 27, 1997. To date, the FHWA received five comments to the docket. The last comment was received in October 1997. Since the interim final rule has been in effect in 1997, the FHWA has determined that the regulation is working effectively and efficiently and without significant burden to the State transportation departments and railroad companies. Consequently, we are adopting the interim final rule as final without any changes.

Summary of Comments

The FHWA received five comments to the docket. The FHWA received comments from Ronald J. Ornee, representing the County of Los Angeles Department of Public Works; Stephanie D. Roth, representing the Railway Progress Institute (now known as the Railway Supply Institute, effective January 1, 2003); Dwight M. Bower, representing the State of Idaho Transportation Department; Michael J. Rush, representing the Association of American Railroads; and Tom Zeinz, representing the Illinois Central Railroad (which merged with the Canadian National Railway Company on July 1, 1999).

The County of Los Angeles Department of Public Works comments support the FHWA's revisions as stated in the interim final rule.

The Railway Progress Institute (RPI) submitted two recommendations. The RPI recommended that the lump sum payment arrangement for reimbursement for railroad adjustments as stated in § 646.216(d)(3)(ii) should be increased from $100,000 to $150,000. The RPI believes that this should be increased to ''reflect the rise in the number of gated crossings, which are more costly to maintain.'' The RPI also recommended that the Appendix Subpart of Part 646 should be revised to use foot-pound units instead of metric in order to eliminate the possibility of miscalculations, which could affect the safety of grade crossings.

The State of Idaho Transportation Department (IDDOT) submitted three recommendations. The IDDOT recommends changing § 646.216(d)(3) to eliminate the phrase ''with its own forces,'' to clarify the flexibility of the railroads'' use of subcontracted work performed on behalf of the railroads. The second recommendation is to change § 646.216(3)(d)(i) to include the phrase ''and other eligible work,'' to allow other specialized services provided to be included in State-railroad agreements. The third recommendation was to eliminate § 646.2116(d)(3)(ii), due to its concern that services provided may exceed $100,000 (*e.g.,* the average cost for installing warning devices and surfacing for a single-track at-grade crossing was $140,000 and $90,000, respectively, at the time of the docket comment submittal).

The Association of American Railroads (AAR) submitted several recommendations. The AAR recommended changing § 140.922(a) to include text regarding a time frame for payments received by the railroad company, based on the date the State transportation department received the progress billings.

The AAR recommended adding text at the end of § 140.922(b) that stipulates a time frame of the acceptance of billable work. The AAR recommended that this text include (1) a time frame for the State transportation department report project inspection results to the FHWA and railroad company; (2) when a project will be considered complete and accepted if no comments are received; and (3) a time frame when the railroad company shall receive payment from the State transportation agency.

The AAR's recommendation

Finally, the AAR recommended changes to § 140.922(c) to reduce the audit period from three years from the date final payment is received by the railroad, to one year after the date the final bill was received by the State transportation department. The AAR recommends that additional text is included stating after the one-year period, the final bill shall be accepted and approved, except as agreed to by the railroad and the State transportation department. The AAR provided these recommendations as a means to assist the FHWA with its efforts to assist State transportation departments in their efforts to obtain timely final billings from the railroads.

The Illinois Central Railroad (ICRR) submitted four recommendations that pertained to § 140.922(b). The ICRR recommended that the FHWA include text regarding inspections of the completed work by the State transportation department and the amount of time that should be allotted for the inspection. Second, the ICRR recommended is to include text that would require State transportation department's payment to the railroads to be made within 45 days, otherwise the railroad shall be entitled to receive interest at prevailing rates from the State transportation department on any outstanding amounts. Third, the ICRR recommended to include text that the State transportation departments shall have one year to conduct a final audit of the railroad's final billing before the said billing is considered accepted and final payment is made in full. Finally, the ICRR recommended including text that requires the State transportation department to conduct an audit and base FHWA's reimbursement to the State transportation department on the audited amount. The ICRR believes that these recommendations would facilitate State transportation departments to expedite its project closure and payment process.

Conclusion

This interim final rule has been in effect since August 27, 1997. The FHWA has not received any additional comments to this interim final rule since October 27, 1997. The transportation community has been conforming to the interim final rule for almost six years, and the FHWA believes that the commerce practices between State transportation departments and railroad companies has benefited from the this rule. The interim final rule was part of FHWA's effort to implement the President's Regulatory Invention Initiative and Executive Order 12866 (Regulatory Planning and Review; 58 FR 51735) by allowing administrative and fiscal flexibility for both the State and railroads as a means to implement current law. The interim final rule has provided the necessary flexibility to States and railroads since 1997.

For the reasons stated above the FHWA adopts as a final rule the interim final rule published on August 27, 1997, at 62 FR 45326.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory

action within the meaning of Executive Order 12866 or the U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rule will be minimal. This action merely adopts as final the interim final rule that has been in effect since August 27, 1997.

This final rule will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 60l–612), the FHWA has evaluated the effects of this final rule on small entities and has determined it will not have a significant economic impact on a substantial number of small entities. This final rule adopts as final the interim final rule that clarifies, streamlines, and simplifies Federal-aid highway-railway crossing program policies for modification and management. This rule reduces the administrative burden on the States associated with the Federal-aid highway-railway crossing program actions.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year.

Additionally, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The railroad-highway program permits this type of flexibility to the States.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

By adopting as final the interim final rule, this rule assists the States by providing more flexibility and clarification in implementing railroad-highway regulations.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000. This action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action 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 rule and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 140

Bonds, Claims, Grant programs-transportation, Highways and roads, Railroads.

23 CFR Part 646

Grant programs-transportation, Highways and roads, Insurance, Railroads.

In consideration of the foregoing, and under the authority of 23 U.S.C. 109(e), 120(c), 130, 133(d)(1), and 315; and 49 CFR 1.48(b), the interim final rule amending 23 CFR parts 140 and 646, that was published at 62 FR 45326 on August 27, 1997, is adopted as a final rule without change.

Issued on: May 1, 2003.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 03–11291 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 661

[FHWA Docket No. FHWA–98–4743]

RIN 2125–AE57

Indian Reservation Roads Bridge Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA adopts as final an interim final rule that establishes the regulation on the Indian reservation road bridge program (IRRBP). The purpose of adopting the interim final rule as final is to establish a nationwide priority program for improving deficient Indian reservation road (IRR) bridges as required by the Transportation Equity Act for the 21st Century (TEA–21). This final rule also establishes the project selection and fund allocation procedures to ensure the uniform application of this IRRBP.

EFFECTIVE DATE(S): June 9, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Wade F. Casey, P.E., Federal Lands Highway (HFPD–9), (202) 366–9486, or Ms. Vivian Philbin, Office of the Chief Counsel (HCC–40), (303) 716–2122. Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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Background

The FHWA published an interim final rule on part 661 on July 19, 1999, at 64 FR 38565. Interested persons were invited to submit comments to FHWA Docket No. FHWA–98–4743. The interim final rule established the nationwide priority program for improving deficient Indian reservation road bridges as required by section 1115 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178; 112 Stat. 107; June 1998). The interim final rule also established the project selection and fund allocation procedures to ensure uniform application of the program and distribution of the funds associated with this program. The interim final rule has been in effect since July 19, 1999.

Section 1115 of TEA–21 required the Secretary of Transportation (hereinafter Secretary) to establish a nationwide priority program for improving deficient IRR bridges. This legislation also required the Secretary, in cooperation with the Secretary of the Interior, to reserve not less than $13 million for projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures for deficient IRR bridges, including multiple-pipe culverts. In order to immediately implement the IRRBP and promptly address the deficient IRR bridges, the FHWA, in conjunction with the Bureau of Indian Affairs (BIA) and in consultation with the Indian tribal governments (ITGs) and other interested parties, developed project selection and fund allocation procedures and issued an interim final rule.

Before issuing a final rule for the IRRBP, we indicated that we would invite and actively consider comments introduced concerning the IRRBP interim final rule and that we would assess how the IRRBP is working, including the fund allocation process based on experience with these rules.

Summary of Comments

Since publication of the interim final rule, the FHWA received 5 comments to the docket, one from a tribal chairman, one from a tribal member, one from the BIA Pacific Regional Office, one from a private citizen and one from the TEA–21 Negotiated Rulemaking Tribal Caucus.

The tribal chairman was concerned that the IRRBP is funded as a $13 million set-aside from the IRR construction program; that the program would be a detriment to tribes in Oklahoma; that the bulk of deficient IRR bridges are in Oklahoma and that there is a need to place bridges on low water crossings.

The individual tribal member who commented was also from Oklahoma and stated that the interim final rule is non-compliant with the Civil Rights Act; it creates two classes of Indian people, those living on reservations and those that do not; and limits the use of program funds by non-BIA owned IRR bridges that serve non-reservation tribes such as those in Oklahoma.

The BIA Pacific Region was concerned that tribal bridge owners would not be able to provide a 20 percent funding match; that right-of-way should be accepted in the form of a memorandum of agreement (MOA) or memorandum of understanding (MOU) between government agencies; that TEA–21 be amended to provide funding for project planning and design; lastly, that the 120 calendar day award period be amended to 180 calendar days.

The private citizen who commented was concerned about treatment of BIA versus non-BIA owned bridges and that all Indian tribes regardless of location should benefit from this bridge program, even if they reside off the ''Indian Reservation.''

The tribal caucus of the TEA–21 Negotiated Rulemaking Committee recommended a number of changes to the interim final rule. It disagreed with the 20 percent fund match requirement for non-BIA owned IRR bridges. It also disagreed with the provision that set a $1.5 million limitation on IRRBP funds for non-BIA owned IRR bridges. In addition, it felt that for structurally deficient IRR bridges with a sufficiency rating of 50 or less, that the BIA should use its 6 percent administrative funds to design replacement bridges. It also recommended that the IRR Coordinating committee be consulted regarding the deficient bridge list.

The FHWA has considered all of the written comments submitted and we are adopting this interim rule as final based on the following discussion:

(a) It is approaching four years since the rules governing the IRRBP have been in place, and ample time has gone by to observe whether the rules are working. Since publication, 69 bridges have been funded for either replacement or rehabilitation for approximately $35.1 million. Based on a query of bridges in the process of being designed [1], 66 bridge plan, specification and estimates (PS&Es) are slated to be completed in FY 2003 that will require roughly $39.7 million in IRRBP construction funds. This is a good indication that the IRRBP funds have been fully used during the

[1] Recall that IRRBP funds can not be used until a PS&E is completed. *See also* 23 U.S.C. 202 (d)(4)(D) and 23 CFR 661.39.

fiscal years (FY) available during TEA–21 (FY 1999—FY 2003) except for $4.9 million. The $4.9 million would be available for additional bridge projects in FY 2004 and provide a stop gap measure during the period following TEA–21's expiration at the end of FY 2003 until the reauthorization process is complete. Projecting ahead to FY 2004, 65 additional bridges are planned for PS&E completion that will require roughly $36.5 million in IRRBP construction funds. Likewise, in FY 2005, 24 bridges are planned for PS&E completion requiring approximately $9.3 million in IRRBP funds. Based on the current use of the IRRBP funds and the need for additional funds beyond TEA–21, the FHWA has determined that the interim rules are working.

(b) The concern, particularly within Oklahoma, that some Indian tribes would not have access to the IRRBP funds during the fiscal years of TEA–21 is unfounded. To date, 26 percent of the IRRBP funds has been spent on bridges in Oklahoma. Other major beneficiaries of IRRBP funds include Indian tribes within New Mexico (17 percent) and Arizona (9 percent). To date, all eligible bridge projects submitted for processing have been funded.

(c) Two Indian tribes and the TEA–21 Negotiated Rulemaking Tribal Caucus urged that the $1.5 million limitation be eliminated for non-BIA owned bridges or even simply waived. The FHWA has determined that to remove the $1.5 million limitation would jeopardize both the IRRBP statute and its legislative history that envisions a national program to address the large number of deficient IRR bridges. This rule does not address Indian people in terms of Reservation status. Rather, the rule identifies two separate classifications of IRR bridges, namely those owned by the BIA and those owned by a State, county or other entity. Based on a recent query of the National Bridge Inventory, out of an inventory of approximately 4,400 IRR bridges there are roughly 1,069 that are deficient. The average age for IRR bridges exceed 40 years and as the IRR bridge infrastructure's becomes older the propensity to become deficient increases. If the $1.5 million limitation were removed for non-BIA owned IRR bridges, it would jeopardize the funding for the 66 bridges that are currently undergoing or completing bridge PS&E's this year and would greatly limit the number of deficient IRR bridges (both BIA-owned and non-BIA owned) which could be funded for replacement or rehabilitation in the future. Finally, 23 U.S.C. 204(c) requires that IRR funds be supplemental to and not in lieu of other funds appropriated to the States. The States currently have access to Surface Transportation Program funds and Highway Bridge Replacement and Rehabilitation funds that can be used on deficient non-BIA owned IRR bridges. Removal of the matching requirement and funding cap would contravene the statutory intent by allowing non-BIA owned IRR bridges to be fully funded with IRR funds.

Conclusion

For the reasons stated above, the FHWA adopts as a final rule the interim final rule published on July 19, 1999, at 64 FR 38565.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or the U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rule will be minimal. This action merely adopts as final the interim final rule that has been in effect since July 19, 1999.

This final rule will not adversely affect, in a material way, any sector of the economy. In addition, this final rule will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs as this action just continues what has been in effect since 1999.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this final rule on small entities including Indian tribal governments (ITGs) and local governments and has determined it will not have a significant economic impact on a substantial number of small entities. The funding available to ITGs under the IRRBP has a beneficial economic impact by contributing to replacement and or rehabilitation of deficient IRR bridges. These bridges are vital to the transportation infrastructure and economic development on Indian reservations. By replacing or rehabilitating deficient IRR bridges the IRRBP is key to enhancing transportation and the movement of goods and services in Indian country.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year.

Additionally, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Indian tribal governments (ITGs) have authority to adjust their participation in the program in accordance with changes made in the program by the Federal government. The IRRBP permits this type of flexibility to the ITGs.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway planning and construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000. The FHWA has determined that participation in the IRRBP by the ITGs is optional, however; it is advantageous to the ITG to participate since the program provides bridge construction and construction monitoring funds for eliminating existing deficient IRR bridges. The ITG

does need to expend IRR or other funds in developing PS&Es and prioritize the project on their transportation improvement program (TIP) before they can apply for the IRRBP funds.

Based on this analysis the FHWA has determined that this action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. Although this proposal is a significant regulatory action under Executive Order 12866, we have determined that it is not a significant energy action under that order, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects 23 CFR Part 661

Bridges, Highways and roads, Indian reservation roads and bridges.

Issued on: May 1, 2003.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, and under the authority of 23 U.S.C. 120(j) and (k), 202, and 315; and 49 CFR 1.48, the interim final rule establishing 23 CFR part 661, which was published at 64 FR 38565 on June 19, 1999, is adopted as a final rule without change.

[FR Doc. 03–11295 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301 and 602

[TD 9040]

RIN 1545–AY56

Guidance Necessary To Facilitate Electronic Tax Administration; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Friday, January 31, 2003 (68 FR 4918), regarding regulations that eliminate regulatory impediments to the electronic filing of Form 1040, ''U.S. Individual Income Tax Return.''

DATES: This correction is effective January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Joseph P. Dewald, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 152 and 7805(f) of the Internal Revenue Code.

Need for Correction

As published, these final regulations contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

■ Accordingly, the publication of final regulations (TD 9040), that were the subject of FR Doc. 03–2063, is corrected as follows:

■ On page 4918, column 3, the regulation heading in the middle of the column, line 5, the ''RIN 1545–AY56'' is corrected to read ''RIN 1545–AY04''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–11487 Filed 5–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–241–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the Kentucky regulatory program (the ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposed revisions to the Kentucky Administrative Regulations (KAR) at 16/18:090 sections 1, 4, and 5 and added section 6 pertaining to sedimentation ponds and ''other treatment facilities.'' Kentucky revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: May 8, 2003.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. Internet address: *bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and

rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16 and 917.17.

II. Submission of the Proposed Amendment

By letter dated June 25, 2002 (administrative record no. KY–1544), Kentucky sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky sent the amendment in response to our request for additional information in a letter dated February 23, 2001 (administrative record no. KY–1503). In that letter, we asked Kentucky to clarify that its sedimentation pond performance standards also apply to other treatment facilities. This issue was originally presented to Kentucky in an issue letter dated May 26, 2000 (administrative record no. KY-1479). Kentucky's response on August 10, 2000 (administrative record no. KY–1489) did not fully satisfy our concerns.

In this submission, Kentucky responded by adding a new Section (6) to its sedimentation pond regulations at 405 KAR 16:090 and 18:090 to establish performance standards for ''other treatment facilities.''

We announced receipt of the proposed amendment in the August 16, 2002, **Federal Register** (67 FR 53539), and in the same document invited public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on September 16, 2002.

By letter dated October 30, 2002, (administrative record no. KY–1568) Kentucky submitted revisions to its original submittal at sections 1, 4, 5 and 6. Because the revisions were comprised of references and did not change the substance or meaning of the regulations, we did not re-open the comment period.

The chronology of events that preceded this notice follow. By letter dated July 30, 1997 (administrative record no. KY–1410), Kentucky sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment revises 405 KAR at sections 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:120.

We announced receipt of the proposed amendment in the September 5, 1997, **Federal Register** (62 FR 46933), and in the same document invited public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 6, 1997. On November 14, 1997, a Statement of Consideration of public comments was filed with the Kentucky Legislative Research Committee. As a result of the comments and by letter dated March 4, 1998, Kentucky made changes to the original submission (administrative record no. KY–1422). The revisions were made at 405 KAR 8:040, 16:060, 18:060, and 18:210. By letter dated March 16, 1998, Kentucky made additional changes to the original submission (administrative record no. KY–1423). The revisions were made at 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210. By letter dated July 14, 1998, Kentucky submitted a revised version of the proposed amendments (administrative record no. KY–1431). All the revisions, except for a portion of those submitted March 16, 1998, were announced in the August 26, 1998, **Federal Register** (63 FR 45430).

During our review of the amendment, we identified concerns relating to the provisions at 405 KAR 8:001, 8:030, 8:040, 16:001, 16:060, 16:090, 16:100, 16:160, 18:001, 18:060, 18:090, 18:100, 18:160, and 18:210. We notified Kentucky of the concerns by letter dated May 26, 2000 (administrative record no. KY–1479). Kentucky responded in a letter dated August 10, 2000, and submitted additional explanatory information (administrative record no. KY–1489). The explanatory information and those revisions not included in previous notices were announced in the June 5, 2002, **Federal Register** (67 FR 38621).

In this rule, we will address only those revisions at 405 KAR 16/18:090 sections 1, 4, 5, and at new section 6. We addressed Kentucky's revisions to its subsidence control regulations at 405 KAR 18:210 in a **Federal Register** notice (KY–229) published on May 7, 2002 (67 FR 30549). We will address the remaining revisions to the Kentucky regulations in future **Federal Register** notices (KY–216 and KY–228).

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

At 405 KAR 16/18:090—Sedimentation Ponds, sections 1 and 5 are revised to require that sedimentation ponds comply with sections 1 through 6 of 405 KAR 16/18:090. The revision was made to incorporate a reference to the new performance standards for ''other treatment facilities'' at section 6 since those facilities may be used in conjunction with, or in addition, to sedimentation ponds. Sections 1, 4, and 6 also cite KRS 350.050, which is the general grant of authority and powers to Kentucky's Natural Resources and Environmental Protection Cabinet (Cabinet). Accordingly, these added references are not inconsistent with the requirements of SMCRA and the Federal regulations.

At 405 KAR 16/18:090 new section 6, Kentucky is adding regulations for ''other treatment facilities.'' The definition of this term was included in Kentucky's July 30, 1997, submission (administrative record no. KY–1410). It will be approved in the final rule notice for KY–228. In new section 6, Kentucky is permitting the use of other treatment facilities in conjunction with sedimentation ponds or in place of sedimentation ponds, if specifically approved by the Cabinet for that purpose on a case-by-case basis, pursuant to the Cabinet's authority in KRS 350.050. Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the Cabinet based on terrain, climate, other site-specific conditions and a demonstration by the permittee that the effluent limitations of 405 KAR 16:070 (or 18:070) Section 1(1)(g) will be met. They must meet all requirements for sedimentation ponds, if the requirements can be appropriately applied to other treatment facilities. The Cabinet shall determine the applicable requirements on a case-by-case basis depending upon the type of other treatment facilities. In every case, the other treatment facilities shall be designed, constructed, and maintained to: (a) Be located as near as possible to the disturbed area and out of perennial streams unless approved by the Cabinet, pursuant to the Cabinet's authority in KRS 350.050; (b) provide adequate sediment storage volume, as approved on a case-by-case basis by the Cabinet based upon the anticipated volume of sediment to be collected during the design precipitation event and a feasible plan for clean-out operations; (c) provide adequate detention time so that the discharges shall meet the

requirements of 405 KAR 16:070 (or 18:070) section 1(1)(g); (d) minimize short circuiting to the extent possible; and (e) provide periodic sediment removal sufficient enough to maintain adequate volume for the design event. The proposed plan for clean-out operations shall be included in the design and shall be approved if the Cabinet determines it is feasible. The plan shall include a time schedule or clean-out elevations, or an appropriate combination thereof, sufficient to maintain adequate volume for the sediment to be collected during the design precipitation event.

The Federal regulations at 30 CFR 816/817.46(d)(1) and Kentucky's proposed regulations both require that other treatment facilities be designed to treat the 10-year, 24-hour precipitation event unless a lesser event is approved by the regulatory authority. Additionally, the Federal regulations at 30 CFR 816/817.46(d)(2) require that other treatment facilities must be designed in accordance with the applicable requirements of 816/817.46(c). In the preamble to the 1983 Federal rule, OSM stated that in ''every case, it is intended that 30 CFR 816.46 (c)(1)(ii) and (c)(1)(iii)(A), (B), (E), and (F) will apply to all other treatment facilities.'' 60 FR 44032, 44047 (September 26, 1983). Kentucky's proposed regulations at section 6 (3)(a) through (e) are substantively identical to the Federal regulations at 30 CFR 816/817. 46 (c)(1)(ii) and (c)(1) (iii)(A), (B), (E), and (F). Thus, we find that Kentucky's proposed revisions to sections 1, 4, and 5 and the addition of Section 6 to its regulations are no less effective than the Federal regulations at 30 CFR 816/817.46(d).

IV. Summary and Disposition of Comments

Public Comments

We announced receipt of the proposed amendment in the August 16, 2002, **Federal Register** (67 FR 53539), and in the same document invited public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The Kentucky Resources Council, Inc. (KRC) submitted written comments on August 29, 2002 (administrative record no. KY–1566). The KRC generally supports the amendment and stated, ''it appears that the state regulation, while different in structure and terminology, provides at least as protective and rigorous a review of proposed sediment controls as does the federal counterpart.''

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), by letter dated August 28, 2002, we solicited comments on the proposed amendment submitted on June 25, 2002, from various Federal agencies with an actual or potential interest in the Kentucky program (administrative record no. KY–1565). We received no responses.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). By letter dated August 28, 2002, we solicited EPA's comments and/or concurrence (administrative record no. KY–1565). This amendment does not contain provisions that relate to air or water quality standards and, therefore, concurrence by the EPA is not required. EPA did not submit comments pertaining to Kentucky's addition of new Section 6 to 405 KAR 16/18:090 which is the subject of this rule, although the EPA commented on an earlier Kentucky submission in a letter dated November 28, 2000 (administrative record no. KY–1501).

V. OSM's Decision

Based on the above findings, we approve the proposed amendment as submitted by Kentucky on June 25, 2002, and revised on October 30, 2002. To implement this decision, we are amending the Federal regulations at 30 CFR part 917 which codify decisions concerning the Kentucky program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that Kentucky's program demonstrates that it has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Kentucky program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require Kentucky to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with''

regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

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

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

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 28, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 917 is amended as set forth below:

PART 917—KENTUCKY

■ 1. The authority citation for part 917 continues to read as follows:

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

■ 2. Section 917.15 is amended in the table by adding a new entry in chronological order by the date of final publication to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
June 25, 2002	May 8, 2003	KAR 16:090 Sections 1(1), (2), 4, 5(2) and (6) and 18:090 Sections 1(1), (2), 4, 5(2) and (6).

[FR Doc. 03–11221 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[WY–030–FOR]

Wyoming Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the Wyoming regulatory program (the ''Wyoming program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposed revisions to rules about placement of spoil outside the mined-out area, clarification of self-

bonding requirements, approving permit revisions, incremental bonds, incidental operation changes, and termination of jurisdiction to be consistent with the corresponding Federal regulations, provide additional safeguards and clarify ambiguities.

EFFECTIVE DATE: May 8, 2003.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261–6550, Internet address: *GPadgett@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background of the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.10, 950.12, 950.15, and 950.16.

II. Submission of the Proposed Amendment

By letter dated April 30, 2002, Wyoming sent us an amendment to its program (Administrative Record No. WY–35–01) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment in response to a November 7, 1988, letter (Administrative Record No. WY–35–05), and a February 21, 1990, letter (Administrative Record No. WY–35–07) that we sent to Wyoming in accordance with 30 CFR 732.17(c), and in response to the required program amendments at 30 CFR 950.16(j, k, n, y, and z) and to include the changes made at its own initiative.

The provisions of Wyoming's Coal Rules that Wyoming proposed to revise are: (1) Chapter 1, Section 2 (by) and Chapter 13, Section 1(a), (b), and (c), definitions, cross-reference, and guidelines on permit revisions; (2) Chapter 4, Section 2(b)(iv), backfilling, grading, contouring, spoil, topsoil, vegetative and organic material to satisfy the required program amendment at 30 CFR 950.16(n); (3) Chapter 11, Sections 1(a), 2(a), 3(b), 3(c) and 4(a), bond and insurance requirements for surface coal mining operations under regulatory programs, intended to satisfy some of the deficiencies identified by OSM in its November 7, 1988, 30 CFR 732 letter to Wyoming; (4) Chapter 12, Section 1(b), review, public participation, and approval or disapproval of permit applications, permit term and conditions, and Chapter 13, Section 1(d)(iv)(D), probable hydrologic consequences assessment revision or update (changes to both Chapters 12 and 13 are intended to satisfy the program deficiency identified at 30 CFR 950.16(y)); (5) Chapter 12, Section 2(d)(iii), bonding and insurance procedures intended to satisfy the program deficiencies (numbered G–1) contained in the February 21, 1990, 30 CFR part 732 letter we sent to Wyoming; (6) Chapter 15, Section 7, termination of jurisdiction, intended to satisfy the program deficiency (D–1) we sent Wyoming in a February 21, 1990, 30 CFR part 732 letter; (7) Chapter 13, Section 1(d), intended to correct a cross-reference listed as a program deficiency in 30 CFR 950.16(j) [part 2]; and (8) Chapter 13, Section 1(a), concerning alternative methods of permit revision, intended to satisfy the program deficiency listed at 30 CFR 950.16(j) [part 3].

We announced receipt of the proposed amendment in the June 19, 2002, **Federal Register** (67 FR 41656). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. WY–35–10). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 19, 2002. We received ''no comment'' letters from two Federal agencies, the U.S. Fish and Wildlife Service and the U.S. Mine Safety and Health Administration.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Minor Revisions to Wyoming's Rules

Wyoming proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules.

1. Wyoming Coal Rules: Chapter 4, Section 2(b)(iv)(C); Federal rules: 30 CFR 816.102(d), Placement of spoil outside the mined-out area.

In this section, Wyoming has simply removed superfluous wording to more closely follow the Federal requirement at 30 CFR 816.102(d).

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

B. Revisions to Wyoming's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Wyoming proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations.

1. Wyoming's Coal Rules: Chapter 4, Section 2(b)(iv); Federal rules: 30 CFR 816.1.2(d), backfilling, grading, contouring, spoil, topsoil, vegetative and organic material.

2. Wyoming's Coal Rules: Chapter 12, Section 1(b) and Chapter 13, Section 1(d)(iv)(D); Federal regulations: 30 CFR 774.15(c)(1), review, public participation, and approval or disapproval of permit applications, permit term and conditions, and probable hydrologic consequences assessment revision or update.

3. Wyoming's Coal Rules: Chapter 15, Section 7; Federal regulations: 30 CFR 700.11, termination of jurisdiction and release of bonds or deposits.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

C. Revisions to Wyoming's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. Wyoming's Coal Rules: Chapter 1, Section 2(by) and Chapter 13, Section 1(a), (b) and (c); there is no Federal counterpart; definitions, cross-reference, and guidelines on permit revisions.

There is no Federal definition of ''revised mining or reclamation operations,'' therefore a comparison cannot be made; however, Wyoming is deleting the phrase ''except for incidental operation changes,'' as required in our July 25, 1990, **Federal Register** notice. It is consistent with and

no less effective than the Federal regulations.

2. Wyoming's Coal Rules: Chapter 11, Sections 1(a), 2(a), 3(b), 3(c), 4(a); Federal regulations: 30 CFR 800.23, self-bonding.

Wyoming proposes revisions to its rules governing self-bonding intended to satisfy deficiencies identified by OSM in its letter dated November 7, 1988, under 30 CFR 732.17 requiring amendments to the Wyoming program.

a. Chapter 11, Section 1(a)

Wyoming has proposed to amend the text of Chapter 11, Section 1(a) by revising it to read, ''* * * The indemnity agreement is signed by the permittee, and if applicable, the parent company or non-parent corporate guarantor.''

The Federal regulations under 30 CFR 800.5(c) state, ''Self bond means an indemnity agreement in a sum certain executed by the applicant and any corporate guarantor made payable to the regulatory authority, with or without a separate surety.''

A comparison of Wyoming's proposed language with that of the Federal regulations finds that it removes an old reference to a Federal agency as a potential guarantor of a self-bond for a coal mining operation. Wyoming's modification of the term ''corporate'' to ''parent'' and ''non-parent'' where applicable clarifies that the definition applies to both a parent and non-parent corporate guarantor. Consequently, as proposed, the minor revisions and clarifications are consistent with and no less effective than the requirements of the Federal regulations.

b. Chapter 11, Section 2(a)(x)

Wyoming has proposed to amend the text of Chapter 11, Section 2(a)(x) by revising the text to read, ''A written guarantee for an operator's self-bond from a parent corporation guarantor, if the guarantor meets conditions of subsections (a)(iv), (vi), (viii) and (ix) of this Section as if it were the operator. Such a written guarantee may be accepted by the Administrator and shall be referred to as a ''parent corporate guarantee.''

The Federal regulations at 30 CFR 800.23(c)(1) state, ''The regulatory authority may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of Paragraphs (b)(1)-(b)(4) of this Section as if it were the applicant. Such written guarantee shall be referred to as a ''corporate guarantee.''

The November 7, 1988, 30 CFR part 732 letter directed Wyoming to revise the text under this section to address the statement that, ''The operator must only supply information addressing requirements not met by the parent corporation guarantor.'' Wyoming has deleted this sentence, consequently, as proposed, the minor revisions and clarifications are consistent with and no less effective than the requirements of the Federal regulations.

c. Chapter 11, Section 2(a)(x)(A)

Wyoming has proposed to amend the text of Chapter 11, Section 2(a)(x)(A) by revising the text to read, ''If the operator fails to complete the reclamation plan, the parent corporate guarantor shall do so or the parent corporate guarantor shall be liable under the indemnity agreement to provide funds to the state sufficient to complete the reclamation plan, but not to exceed the bond amount.''

The Federal regulations at 30 CFR 800.23(c)(1)(i) state, ''If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the regulatory authority sufficient to complete the reclamation plan, but not to exceed the bond amount.''

A comparison of Wyoming's proposed language with that of the Federal regulations finds that Wyoming has added the term ''parent corporate'' in front of guarantor to clarify which type of guarantor is being referred to in the rule. Consequently, as proposed, the clarification is consistent with and no less effective than the requirements of the Federal regulations.

d. Chapter 11, Section 2(a)(x)(B)

Wyoming has proposed to amend the text of Chapter 11, Section 2(a)(x)(B) by revising the text to read, ''The parent corporate guarantee shall remain in force unless the parent corporate guarantor sends notice of cancellation by certified mail to the operator and to the Administrator at least 90 days in advance of the cancellation date, and the Administrator accepts the cancellation.''

The Federal regulations under 30 CFR 800.23(c)(1)(ii) state, ''The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the regulatory authority at least 90 days in advance of the cancellation date, and the regulatory authority accepts the cancellation.''

A comparison of Wyoming's proposed language with the Federal regulations finds that the proposed revisions to Chapter 11, Section 2(a)(x)(B) remove the reference to a Federal agency guarantor and clarify which type of guarantor is being referred to in the rule. The resulting Wyoming regulations are consistent with, and no less effective than, the Federal regulations.

e. Chapter 11, Section 2(a)(xi)

Wyoming has proposed to amend the text of Chapter 11, Section 2(a)(xi) by incorporating the following language: ''A written guarantee for an applicant's self-bond from any corporate guarantor, whenever the operator meets the conditions of subsections (a)(iv), (a)(vi) and (a)(ix) of this Section, and the guarantor meets the conditions of subsections (a)(iv), (a)(vi), (a)(vii) and (a)(ix) of this Section may be accepted by the Administrator. Such written guarantee shall be referred to as a ''non-parent corporate guarantee.'' The terms of this guarantee shall provide for compliance with the conditions of subsections (a)(x)(A) and (B) of this Section. The Administrator may require the operator to submit any information specified in subsection (a)(vii) of this Section in order to determine the financial capabilities of the operator.''

The Federal regulations under 30 CFR 800.23(c)(2) state, ''The regulatory authority may accept a written guarantee for an applicant's self-bond from any corporate guarantor, whenever the applicant meets the conditions of paragraphs (b)(1), (b)(2) and (b)(4) of this section, and the guarantor meets the conditions of paragraphs (b)(1) through (b)(4) of this section. Such a written guarantee shall be referred to as a ''non-parent corporate guarantee.'' The terms of this guarantee shall provide for compliance with the conditions of paragraphs (c)(1)(i) through (c)(1)(iii) of this section. The regulatory authority may require the applicant to submit any information specified in paragraph (b)(3) of this section in order to determine the financial capabilities of the applicant.''

A comparison of Wyoming's proposed language with that of the Federal regulations finds that it now incorporates the Federal counterpart language addressing the conditions under which the regulatory authority may accept a written guarantee of an operator's self-bond from a third party other than the parent corporation. Therefore, it is no less effective than the Federal regulations.

f. Chapter 11, Section 2(a)(xii)

Wyoming has proposed to amend the text of Chapter 11, Section 2(a)(xi) by renumbering it as (xii), as a result of creating a new Section (2)(xi), and revising the text to read, ''The following in order:

(A) For the Administrator to accept an operator's self-bond, the total amount of the outstanding and proposed self-bonds of the operator shall not exceed 25 percent of the operator's tangible net worth in the United States, or

(B) For the Administrator to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the parent corporate guarantor's tangible net worth in the United States, or''

The Federal regulations at 30 CFR 800.23(d) state, ''For the regulatory authority to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the regulatory authority to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States.''

A comparison of Wyoming's proposed language with that of the Federal regulations finds that Wyoming has added the terms ''parent'' and ''parent corporate'' to maintain consistent references in the rules, and has reformatted the manner in which the rules are presented. Consequently, as proposed, the clarification is consistent with and no less effective than the requirements of the Federal regulations.

g. Chapter 11, Section 2(a)(xii)

Wyoming has proposed to amend the text of the newly created Chapter 11, Section 2(a)(xii) by incorporating the following language ''(C) For the Administrator to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bond shall not exceed 25 percent of the non-parent corporate guarantor's tangible net worth in the United States.''

The Federal regulations at 30 CFR 800.23(d) state, ''For the regulatory authority to accept a non-parent corporate guarantee, the total amount of the non-parent corporate guarantor's present and proposed self-bonds and guaranteed self-bonds shall not exceed 25 percent of the guarantor's tangible net worth in the United States.''

A comparison of Wyoming's proposed language with that of the Federal regulations finds that it now incorporates the Federal counterpart language addressing the conditions under which the regulatory authority may accept a non-parent corporate guarantee. Therefore, it is no less effective than the Federal regulations.

h. Chapter 11, Section 3(b)(i)

Wyoming has proposed to amend the text of Chapter 11, Section 3(b)(i) by revising the text to read, ''The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent or non-parent corporate guarantor, and shall bind each jointly and severally.''

The Federal regulations at 30 CFR 800.23(e)(1) state, ''The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and shall bind each jointly and severally.''

A comparison of Wyoming's proposed language with that of the Federal regulations finds that Wyoming has added the term ''or non-parent'' and deleted the reference to ''Federal agency'' to clarify that both types of corporate guarantors are being referred to in the rule, and to remove the obsolete reference to a Federal agency. Consequently, as proposed, the clarification is consistent with and no less effective than the requirements of the Federal regulations.

i. Chapter 11, Section 3(b)(ii)

Wyoming has proposed to amend the text of Chapter 11, Section 3(b)(ii) by revising the text to read, ''Corporations applying for a self-bond or parent and non-parent corporations guaranteeing an operator's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the Administrator along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, all corporate guarantors shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.''

The Federal regulations at 30 CFR 800.23(e)(2) state, ''Corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of such authorization shall be provided to the regulatory authority along with an affidavit certifying that such an agreement is valid under all applicable Federal and State laws. In addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.''

A comparison of Wyoming's proposed language with that of the Federal regulations finds that it now requires the submission of an affidavit certifying that the agreement is valid under all applicable State and Federal laws, and requires that any grantor provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement. The revised text also deletes the outdated references to a Federal agency guaranty. It is consistent with and no less effective than the Federal regulations.

As a result of the changes made to Chapter 3(b)(ii), Wyoming has also revised their policy memorandum, ''Wyoming Environmental Quality Act—Form and Execution of Self-Bonding Indemnity Agreement and Corporate or Federal Agency Guaranty'' to remove all references to a Federal Agency Guaranty and to add the requirement that the affidavit certifying the agreement is valid under all applicable State and Federal laws shall also be submitted. The resulting memorandum, ''Wyoming Environmental Quality Act—Form and Execution of Self-Bonding Indemnity Agreement and Parent or Non-Parent Corporate Guaranty'' is consistent with and no less effective than the requirements of the Federal regulations.

j. Chapter 11, Section 3(c) and Section 4(a)(ii)

Wyoming has proposed to amend the text of the two regulations cited above to change the reference to Section 2 (a)(xi) to Section 2(a)(xii).

A comparison of Wyoming's proposed language to the existing language finds that the insertion of a new rule under Chapter 11, Section 2(a)(xi) required that the existing cross-references in these two rules reference the correct subsection. The correct subsection has been referenced and this Wyoming rule is now consistent with and no less effective than the Federal regulations.

3. Wyoming's Coal Rules: Chapter 12, Section 2(d)(iii); Federal regulations: 30 CFR 800.11(b)(4), separate increments within a bonded area.

Wyoming proposes to add a subsection to its regulations and revise its existing regulations to mandate that isolated and independent increments of the permitted mine area be of sufficient size and configuration for efficient reclamation operations, should reclamation by the Wyoming Department of Environmental Quality become necessary.

Federal regulations at 30 CFR 800.11(b)(4) require what Wyoming is proposing here. Therefore, the Wyoming regulations are no less effective than the Federal regulations.

4. Chapter 13, Section 3(a) to read Section 1(d) rather than 1(b) [formerly chapter XIV].

This revision was approved in the August 6, 1996, **Federal Register** but the required program amendment was inadvertently not removed from the Code of Federal Regulations (CFR).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. WY–35–6), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Wyoming program (Administrative Record No. WY–35–6).

Two Federal agencies commented. David Lauriski of the U.S. Mine Safety and Health Administration, in his May 23, 2002, letter, stated that none of the (rule) changes have a direct impact on employee or public health or safety and that he consequently has no comments. Michael Long of the U.S. Fish and Wildlife Service, in his June 4, 2002, comment, stated that he did not believe that the proposed amended regulations would adversely affect any threatened or endangered species on coal mine permit areas in Wyoming.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Wyoming proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

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

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On May 5, 2002, we requested comments on Wyoming's amendment (Administrative Record Nos. WY–35–3 and 4), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the Wyoming amendment sent to us.

We approve, as discussed in: finding III.A.1, concerning placement of spoil outside the mined-out area; finding III.B.1, concerning backfilling, grading, contouring, spoil, topsoil, vegetative and organic material; finding III.B.2, concerning review, public participation and approval or disapproval of permit applications, permit term and conditions, and probable hydrologic consequences assessment revision or update; finding III.B.3, concerning termination of jurisdiction and release of bonds or deposits; finding III.C.1, concerning the definition of revised mining or reclamation operations; finding III.C.2.a through j, concerning self-bonding; finding III.C.3, concerning isolated increments of the permitted mine area; and finding III.C.4, concerning the removal from the CFR a revision that was approved in the August 6, 1996, **Federal Register**, but was not removed as a required program amendment from the CFR.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Wyoming program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Wyoming to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13132—Federalism

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

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

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

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: a. does not have an annual effect on the economy of $100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 11, 2003.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 950 is amended as set forth below:

PART 950—WYOMING

■ 1. The authority citation for part 950 continues to read as follows:

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

■ 2. Section 950.12 is amended by revising the section heading to read as follows:

§ 950.12 State program provisions and amendments not approved.

* * * * *

■ 3. Section 950.15 is amended in the table by adding a new entry in chronological order by May 8, 2003 to read as follows:

§ 950.15 Approval of Wyoming regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* *	* * *
April 30, 2002	May 8, 2003	Chapter 1, Section 2(by). Chapter 4, Section 2(b)(iv). Chapter 11, Sections 1(a), 2(a), 3(b), 3(c), 4(a). Chapter 12, Section 1(b), Section 2(d)(iii). Chapter 13, Section 1(a), (b), (c), (d)(iv)(D). Chapter 15, Section 7.

§ 950.16 [Amended]

■ 4. Section 950.16 is amended by removing and reserving paragraphs (j), (k), (n), (y) and (z).

[FR Doc. 03–11219 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0045—FRL–7495–6]

RIN 2060–AK53

National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting administrative amendments; change in effective date.

SUMMARY: On February 18, 2003, EPA published a direct final rule on the national emission standards for hazardous air pollutants (NESHAP) for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills (68 FR 7706). The effective date of that direct final rule is May 19, 2003, and remain unchanged, except the amendment adding Incorporation by Reference (IBR) material which must, for administrative purposes, become effective prior to May 19, 2003. This correction moves up the effective date for that amendment, which affects the centralized IBR section for 40 CFR part 63. In addition, the IBR amendment included in the February 18 direct final rule added a new IBR addressing test method ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]; thus the effective date of this IBR material must also match the effective date of the centralized IBR section. This correction moves up the effective date in 40 CFR 63.865(b)(3) and 40 CFR 63.865(b)(5)(iii).

DATES: Effective Dates: The revision of 40 CFR 63.14(i) and the removal of 40 CFR 63.14(j), published on February 18, 2003 (68 FR 7713) are effective May 8, 2003. The IBR amendments to 40 CFR 63.865(b), published on February 18, 2003 (68 FR 7716) are effective May 8, 2003. The IBR of certain publications in the NESHAP is approved by the Director of the Office of the Federal Register on May 8, 2003.

FOR FURTHER INFORMATION CONTACT: For information regarding the administration of the IBR, contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–7946, facsimile number (919) 541–5689, electronic mail (e-mail) address: *eck.janet@epa.gov.* All other inquiries regarding the NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills should be addressed to Mr. Jeff Telander, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5427, facsimile number (919) 541–5600, e-mail address: *telander.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: An electronic copy of today's notice will be available on the Worldwide Web through the Technology Transfer Network (TTN). Following the Assistant Administrator's signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* In addition, an electronic version of all of the above mentioned promulgated NESHAP is currently available on the TTN at *http://www.epa.gov/ttn/oarpg/new.html.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Dated: April 29, 2003.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 03–11461 Filed 5–7–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 173, 177 and 180

[Docket No. RSPA–01–10373 (HM–220D)]

RIN 2137–AD58

Hazardous Materials: Requirements for Maintenance, Requalification, Repair and Use of DOT Specification Cylinders; Response to Appeals and Extension of Compliance Dates

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

ACTION: Final rule; response to appeals.

SUMMARY: On August 8, 2002, RSPA published a final rule under Docket No. RSPA–01–10373 (HM–220D) amending the requirements of the Hazardous Materials Regulations applicable to the maintenance, requalification, repair, and use of DOT specification cylinders. The revisions simplified the regulations, responded to petitions for rulemaking, addressed recommendations of the National Transportation Safety Board, and enhanced the safe transportation of hazardous materials in cylinders. In response to appeals submitted by persons affected by the August 8, 2002 final rule, this final rule amends certain requirements, extends certain compliance dates, and makes minor editorial corrections.

DATES: *Effective Date:* This rule is effective June 9, 2003.

Compliance Date: Delayed compliance dates for certain regulatory provisions are set forth in the regulatory text.

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SUPPLEMENTARY INFORMATION:

I. Background

On August 8, 2002, the Research and Special Programs Administration (RSPA, we) published a final rule under Docket No. 01–10373 (HM–220D) (67 FR 51625) amending the requirements of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) applicable to the maintenance, requalification, repair, and use of DOT specification cylinders.

We received more than 20 appeals. Several appellants filed supplements to their initial appeals of the implementation of HM–220D, either in total or in part. Appellants included the Air Conditioning and Refrigeration Institute, American Trucking Associations, Compressed Gas Association (CGA), Dangerous Goods Advisory Council, Fire Suppression Systems Association (FSSA), National Propane Gas Association (NPGA) and representatives of cylinder and equipment manufacturers, refillers and users, distributors, and shippers. Because of opposition to certain requirements in the August 8, 2002 final rule, we published a final rule in the **Federal Register** on September 30, 2002 (67 FR 51626), extending the compliance date for certain provisions until May 30, 2003. This extension allowed RSPA to fully evaluate the issues raised by the appellants. The September 30, 2002 final rule extended the compliance date for the following requirements:

—§§ 173.40(b) and 173.301a(d)(3)—Prohibiting the pressure at 55 °C (131 °F) in a cylinder from exceeding the service pressure of the cylinder. This provision affects Hazard Zone B gases, in particular hydrogen sulfide.

—§§ 173.301(f)(2) and 177.840(a)(1)—Requiring the inlet port to the relief channel of a pressure relief device, when installed, to be in the cylinder's vapor space.

—§ 173.301(f)(3) and 180.205(c)(4)—Requiring the set pressure of the pressure relief device to be at test pressure with a tolerance of minus 10% to plus zero for DOT 3-series cylinders.

—§ 173.301(h)(2)—Allowing cylinders filled with a flammable, corrosive, or noxious gas to have the valves protected by loading the cylinders in an upright position and securely bracing in rail cars or motor vehicles, when loaded by the consignor and unloaded by the consignee.

Discussion and Resolution of Appeals

Sections 173.40(b) and 173.301a(d)(3). The August 8, 2002 final rule contains a requirement that the pressure of a Hazard Zone A or B toxic by inhalation hazard material at 55 °C (131 °F) may not exceed the service pressure of the cylinder and that sufficient outage must be provided so that the cylinder will not be liquid full at 55 °C (131 °F). CGA and another appellant state that this revision would affect the shipment of hydrogen sulfide, a Hazard Zone B material, in DOT specification 3A and 3AA480 cylinders, as authorized in § 173.304a. Specifically, the appellants point out that the pressure of hydrogen sulfide at 55 °C (131 °F) exceeds the 480 psi marked service pressure for DOT 3A and 3AA480 cylinders. They also note that the § 173.304a table continues to authorize DOT specification cylinders with a marked service pressure of 480 psi, thus creating a conflict with the provisions in § 173.40(b). The appellants are correct that an inconsistency exists between the provisions in § 173.40(b) and the entry in § 173.304a table for hydrogen sulfide. Hydrogen sulfide has a vapor pressure of about 545 psi at 55 °C (131 °F). Therefore, in this final rule, we are revising the hydrogen sulfide entry in the § 173.304a table. This revised entry permits the continued use of currently authorized cylinders for hydrogen sulfide until December 31, 2003. After the transition period, hydrogen sulfide must be transported in a cylinder that conforms to the requirements in § 173.40(b). Also, for consistency we are extending the dates in §§ 173.40(b) and 173.301a(d)(3) to December 31, 2003.

In addition, an appellant notes that throughout the HMR, the normal filling densities and liquid-full conditions for liquefied compressed gas in cylinders are based on two temperatures, ''54 °C (130 °F)'' and ''55 °C (131 °F).'' The appellant suggests that one set of values be used. We agree and are revising the pressure reference temperature to read ''55 °C (131 °F)'' throughout the HMR, except in § 173.306. This reference temperature is consistent with that used in the United Nations Recommendations on the Transport of Dangerous Goods (UN Model Regulations).

Sections 173.301(f)(2) and 177.840(a)(1). Appellants express concern about the requirement in the August 8, 2002 final rule that the inlet port to the relief channel of a pressure relief device (PRD), when installed, must be in the cylinder's vapor space. Several appellants maintain that it is not possible to assure that the PRD is in communication with the vapor space. They further state that vapor space shifts based on the orientation of a cylinder, thus making it impossible to insure that the inlet port to the PRD is always in the cylinder's vapor space. Other appellants, representing the fire suppression industry, express concern that the current configuration of most fire suppression cylinders locates the inlet port to the pressure relief device in a siphon tube, which communicates directly with the liquid portion of the contents rather than the vapor space. Consequently, this requirement would ban most fire suppression cylinders from transportation. The appellants state that in order to comply with the requirement, fire suppression cylinders would have to be redesigned to increase flow capacity and resubmitted to Underwriters Laboratories for testing and approval. They argue that this process effectively could take eighteen months or more. Moreover, several appellants cite test data generated in the late 1970s by CGA, with DOT participation, demonstrating that the current PRDs operate as designed regardless of whether the PRD inlet port is in the liquid or vapor space of the cylinder. CGA furnished a copy of the bonfire test data used to support the adequacy of PRDs conforming to CGA Pamphlet S–1.1.

Based on the merits of the comments and test data, we agree that the current requirements in CGA Pamphlet S–1.1 are adequate, regardless of whether the inlet port to a PRD communicates with the liquefied gas or the vapor space. However, it remains our position that, in a fire, a cylinder that vents a liquefied flammable gas poses a greater risk than if it vents vapors. Appellants support continuing to apply the requirement to liquefied flammable gases to minimize the amount of gas released and potential for initiation of the gas. Therefore, we are revising §§ 173.301(f)(2) and 177.840(a)(1) to require that the PRD be in the vapor space of cylinders used to transport Division 2.1 (flammable gas) materials, only.

Sections 173.301(f)(3) and 180.205(c)(4). Sections 173.301(f)(3) and 180.205(c)(4) set forth requirements for PRDs. The August 8, 2002 final rule requires that PRDs for DOT–3 series cylinders must be set at 100% of test pressure, with an allowable tolerance of minus 10% to plus zero. CGA and several other appellants oppose this requirement, stating that it does not take into consideration that several types of PRDs are activated either by pressure, temperature or both. For example, appellants state that certain PRDs, such as CG–2, CG–3, and CG–9 devices, are fusible plug devices activated by temperature and not by pressure. PRDs incorporating a CG–1, CG–4, and CG–5 device are activated by pressure or a combination of temperature and pressure. Similarly, other appellants state that the requirements specified in CGA Pamphlet S–1.1 restrict certain PRDs, such as CG–2, CG–3, and CG–7 devices, to service pressures below 500 psig, regardless of the test pressure of the cylinder. The appellants request that the provision requiring PRDs on DOT 3-series cylinders be set at 100% of test pressure, with an allowable tolerance of minus 10% to plus zero apply to the CG–1, CG–4, and CG–5 PRDs, only. We

agree with the appellants and have made the appropriate changes.

In addition, FSSA and other appellants in the fire protection industry emphasize that cylinders used for fire extinguishers have assemblies consisting of a combined rupture disk and holder as specified in CGA Pamphlet S–1.1, paragraph 6.3.2. These appellants reiterate that CGA Pamphlet S–1.1 stipulates an operating tolerance of minus 15% to plus zero for PRDs with a holder. We agree that while the rupture disks are designed with a tolerance of minus 10% to plus zero, when a disk is placed inside a holder, the disk may rupture below its allowable tolerance of 10%. Therefore, we are allowing an additional 5% tolerance, as allowed in CGA S–1.1–1994, paragraph 6.3.2, for a combined rupture disk and holder. We are revising §§ 173.301(f)(3) and 180.205(c)(4) for consistency with these tolerances requirements.

Section 173.301(h)(2). Section 173.301 sets forth the requirements for cylinder valve protection. The August 8, 2002 final rule discontinues an authorization that allows protection of the valves by loading and securing the cylinders in an upright position in cars and motor vehicles, when loaded by the consignor and unloaded by the consignee. An appellant, opposing the removal of this provision, states that shipping experience using this particular method has proven to be adequate and requests that the authorization be continued.

Based upon the appellant's request that this method be allowed for cylinders manufactured before October 1, 2007, in the September 30, 2002 final rule we adopted a new paragraph (h)(2)(iv) to permit continuance of the authorization until May 30, 2003. Upon further consideration of the impact on industry and the changes adopted in § 177.840(a)(1), we agree that the authorization should be continued for cylinders properly secured in rail cars and motor vehicles during transportation. Therefore, we are revising paragraph (h)(2)(iv) to continue the authorization.

Section by Section Review

The following is a section-by-section summary of changes and, where applicable, a discussion of appeals received.

Part 107

Section 107.803. Section 107.803 sets forth the application procedures for approval as an Independent Inspection Agency (IIA). In the August 8, 2002 final rule, we inadvertently omitted a provision contained in former § 173.300a. The provision authorizes an approved IIA to perform other inspections and functions relating to the inspections and verifications of cylinders used in the transportation of hazardous materials. We are correcting the oversight by adding this provision in a new paragraph (e) in this final rule.

Section 107.805. Section 107.805 sets forth application procedures for persons seeking approval to perform periodic cylinder requalification. In the August 8, 2002 final rule, we inadvertently omitted a provision contained in former § 173.34(e)(2)(iv). The provision requires a person who holds a current requalification identification number (RIN) to inform RSPA in writing within 20 days of any change in the company's address, cylinder qualification personnel or testing equipment. The requirement to notify RSPA of these changes is reiterated in all RIN issuance letters. We are correcting the oversight by adding the provision in a new paragraph (e) in this final rule.

Part 171

Section 171.12. In paragraph (b)(15), we are revising the reference ''173.301(j) through (l)'' to read ''173.301(j) through (m)'' for consistency with a change made in the paragraph designations in § 173.301 of this final rule.

Section 171.12a. In paragraph (b)(13), we are revising the reference ''§ 173.301(i) and (j)'' to read ''§ 173.301(j) through (m)'' for consistency with a change made in the paragraph designations in § 173.301 of this final rule.

Part 173

Section 173.40. Section 173.40 sets forth the general packaging requirements for toxic materials packaged in cylinders. An appellant requests that we reconsider the compliance date of a requirement contained in paragraph (a)(2) that permits a DOT 3AL cylinder made of aluminum alloy 6351–T6 filled with a Hazard Zone A material prior to October 1, 2002, to be offered for transportation and transported to its ultimate destination for reprocessing or disposal until April 1, 2003. The appellant states that the April 1, 2003 compliance date did not provide sufficient time to recover affected cylinders. Because cylinders made of aluminum alloy 6351–T6 are susceptible to sustained load cracking, we are not extending the April 1, 2003 compliance deadline date in this final rule. However, persons who may need to transport a filled cylinder for recovery or reprocessing after April 1, 2003, may submit an application for exemption in accordance with the procedures in 49 CFR 107.105 or 107.117.

We are revising paragraph (b), as discussed earlier in this preamble, to extend the compliance date for the requirement that the service pressure of a cylinder used for a Hazard Zone B material equal or exceed the material's vapor pressure at 55 °C (131 °F) until December 31, 2003.

An appellant questions whether the requirement in paragraph (c) that each cylinder valve outlet must be closed with a plug or valve applies to any amount of Division 2.3 Hazard Zone A gas. The requirements of § 173.40 for Division 2.3 Hazard Zone A gases apply to any quantity of hazardous material, including residues and mixtures that meet the definition for this division and zone. Further, this requirement has been in effect since October 1, 1991.

In paragraph (d)(2), we are revising the valve protection requirements to provide that when a protective device or overpack is used, it must be designed to protect the valve from breakage or leakage resulting from a drop of 2.0 m (7 ft) onto a non-yielding surface, such as concrete or steel. An appellant states that although a deformed valve is undesirable, a deformed valve should be acceptable if there is no loss of contents. We agree and are removing the requirement that the valve be protected from deformation.

Section 173.163. We are making a minor editorial change in this section.

Section 173.181. We are removing a reference to former § 173.34(d)(6).

Section 173.226 and 173.228. We are revising §§ 173.226(a) and 173.228(b) to allow welded cylinders filled before October 1, 2002 with Hazard Zone A materials to be transported until December 31, 2003, for reprocessing or disposal of the contents. An appellant requests that we allow welded cylinders filled with Hazard Zone A material before October 1, 2002, to be returned empty to the shipper without any time limitation. Because of the inherent risks posed by using welded cylinders for toxic by inhalation hazard materials, we do not agree that an unlimited time period should be granted.

Section 173.301. Paragraph (a) includes general cylinder requirements for shipment of compressed gases in cylinders and spherical pressure vessels. We are revising the wording in paragraph (a)(3) to require the replacement of a leaking PRD where the leak is through the fusible metal and the opening in the plug body. An appellant states that most gas suppliers do not have the skills to perform these repairs on defective PRDs; therefore, the device

should be replaced and not repaired. We agree with the appellant.

As discussed earlier in this preamble, we are making several changes to the PRD requirements in paragraph (f). We are revising paragraph (f)(2) to require the PRD to be in the vapor space of a cylinder only when it contains a Division 2.1 (flammable gas) material. In paragraph (f)(3), we are applying the operating tolerance requirements to types CG–1, CG–4, and CG–5 PRDs only. We are also allowing an additional 5% tolerance when a PRD is fitted in a disk holder.

A commenter pointed out that the PRD requirement in paragraph (f)(3) also should apply to a DOT 3T cylinder when fitted with a PRD. We agree that these safety controls should apply and are including the DOT 3T cylinder in the provision.

An appellant requests that in paragraph (f)(5)(i) we revise the wording ''or a nonliquefied gas to a pressure of *1800 psig or higher*'' to read ''or a nonliquefied gas to a *pressure greater* than 1800 psig.'' The appellant states that this change would permit vast numbers of ''DOT E1800 lecture bottles'' which are rated for 1800 psi and do not have a PRD to continue to be shipped. We do not agree with the appellant. The provision requiring a cylinder filled with a nonliquefied gas to a pressure of 1800 psi or higher at 70 °F to have a PRD was adopted into the regulations before 1950. We proposed no revision to the requirement. Therefore, the appellant's request is outside the scope of this rulemaking and the requirement is retained.

Paragraph (g) sets forth requirements for manifolding cylinders in transportation. We are revising the wording in paragraph (g)(1) to allow PRDs on manifolded horizontal cylinders, mounted on a motor vehicle or in a framework, to be based on the lowest marked pressure of any individual cylinder in the manifold unit. Appellants state that allowing the manifolded cylinders to have PRDs with the same pressure setting will enhance safety because the set pressure on the individual cylinders will not exceed the minimum test pressure of the cylinders. We agree and have revised the provision accordingly. In addition, the PRD setting of any horizontal cylinder removed from an existing manifold and installed into a different manifold must meet the requirements in paragraph (g)(1) to prevent the premature release of cylinder contents during transportation.

Another appellant requests the removal of a requirement in paragraph (g)(1) stating that PRDs on manifolded horizontal cylinders filled with a compressed gas must be arranged to discharge unobstructed to the open air in such a manner as to prevent any escaping gas from contacting personnel or any adjacent cylinders. The appellant states that the requirement is unnecessary for Division 2.2 (non-flammable) gases and would impose considerable costs with no increase in safety. It was our intent to prevent, after a PRD activates, a condition that restricts the gas from releasing from the device. We are revising the requirement for clarity.

Paragraph (h) sets forth requirements for cylinder valve protection. As discussed earlier in this preamble, we are revising paragraph (h)(2) for cylinders manufactured before October 1, 2007, to allow cylinders to have their valves protected by loading the cylinders in an upright position and securely restraining them in rail cars or motor vehicles, when loaded by the consignor and unloaded by the consignee.

Paragraph (h)(3) contains valve protection requirements for cylinders manufactured on and after October 1, 2007. An appellant who opposes the requirement requests that it be removed. The appellant states that with an estimated 100 million seamless and welded cylinders in circulation within the United States, other than acetylene cylinders, a 5-year transition period does not provide sufficient time for the changeover to a new valve protection system. Further, the appellant states that the valve caps currently in use may not meet the new requirement, and a new design that is different from existing designs will be required to prevent older style caps from being used on cylinders manufactured after October 1, 2007.

Another appellant requests a revision to paragraph (h)(3) to require that cylinder caps and valve guards meeting the new performance drop test adopted in the August 8, 2002 final rule be stamped with the marking ''§ 173.301(h)(3).'' The appellant states that, without this marking, no means exist to identify the caps and valve guards conforming to the performance requirement; thus, the rule would be unenforceable. We do not agree with the first appellant's request that paragraph (h)(3) be removed. The performance requirement provides increased assurance that the valves will be protected if the cylinder is dropped onto a concrete surface. The August 8, 2002 final rule provides a five-year transition period to facilitate compliance with the requirement.

We believe the latter appellant's suggestion that some means should be used to identify cylinder valve caps and guards that meet the new performance requirement has merit. However, we did not include a marking requirement in the notice of proposed rulemaking (Docket HM–220, 63 FR 58460, October 30, 1998). Therefore, the request is beyond the scope of this rulemaking. Even though we did not propose a method to distinguish valve caps and guards conforming to the performance requirement, we encourage industry to employ effective methods. We will consider proposing a marking requirement in a future rulemaking.

Paragraph (i)(3) addresses cylinders longer than 2 m (6.5 ft) horizontally mounted on motor vehicles or in frames. The appellant who opposed the requirement in paragraph (h)(2) that PRDs be arranged in such a manner as to prevent any escaping gas from contacting personnel or any adjacent cylinders also opposed a similar provision in this paragraph. We are revising the provision to clarify that gas released from the device must be unobstructed.

In the August 8, 2002 final rule, we inadvertently omitted reciprocity provisions contained in former § 173.301(i)(2). The provisions authorize cylinders marked ''CTC'' and conforming to Canadian Transport of Dangerous Goods Regulations to be transported to, from or within the United States under certain conditions. We are correcting the oversight by adding the provisions in paragraph (m) in this final rule.

Section 173.301a. Paragraph (d)(3) is revised for consistency with the provisions in § 173.40 which contains general packaging requirements for Hazard Zone A and B materials.

Section 173.302a. An appellant expresses concern that the regulatory text adopted in paragraph (b)(3)(iii) conflicts with the preamble discussion of this section contained in the August 8, 2002 final rule. The regulatory text states that compliance with the average wall stress limitation may be met by computing the elastic expansion rejection limit (REE) in accordance with CGA Pamphlet C–5. However, the preamble states ''we are not authorizing the use of an REE marking applied to the cylinder by a person other than the manufacturer because it may be inaccurate.'' The appellant states that CGA Pamphlet C–5 has allowed persons other than the manufacturer to determine and mark the REE on the cylinder for years. With this being the case, there is no way to differentiate between an REE marking made by the manufacturer or some other person. We disagree with appellant. In our review of CGA Pamphlet C–5, we found no

provision that allows the REE to be stamped by persons other than the cylinder manufacturer. This fact was verified with CGA.

Section 173.304. For uniformity with other references in the HMR, the reference to temperature ''54 °C (130 °F)'' is revised to read ''55 °C (131 °F).''

Section 173.304a. In paragraph (a)(2) table the heading reference ''§§ 173.301(a)(1), 173.301(a)(4)'' in column three is revised to read ''§§ 173.301(l), 173.301a(e), and 180.205(a)'' for consistency with the provisions in the HMR. For uniformity with other temperature references in the HMR, we are revising the wording ''Not liquid full at 130 °F'' and ''Not liquid at 130 °F'' to read ''Not liquid full at 131°F'' in the following entries: ''Dichlorodifluoromethane and difluoroethane mixture,'' ''Insecticide, gases liquefied,'' ''Liquefied nonflammable gases, other than classified flammable, corrosive, toxic & mixtures or solution thereof filled w/ nitrogen, carbon dioxide, or air,'' and ''Methyl acetylene-propadiene, mixtures, stabilized.''

We are correcting several shipping names by replacing the word ''inhibited'' with the word ''stabilized'' for the entries, ''Tetrafluoroethylene/ inhibit,'' ''Trifluorochloroethylene, inhibited,'' ''Vinyl fluoride, inhibited,'' and ''Vinyl methyl ether, inhibited.'' These changes were adopted in a separate final rule (Docket No. RSPA–2000–7702 (HM–215D), June 21, 2001, 66 FR 33316) that made revisions to harmonize the HMR with the standards contained in the UN Model Regulations.

In paragraph (c), for uniformity with other references in the HMR, we are revising the reference temperature ''54 °C (130 °F)'' to read ''55 °C (131 °F).''

In paragraph (d), the specific gravity ''9.504'' is in error. We are correcting the value to read ''0.504.''

Section 173.305. In paragraph (b), for uniformity with other references in the HMR, we are revising the reference temperature ''54 °C (130 °F)'' to read ''55 °C (131 °F).''

Section 173.306. In paragraph (g)(5), we are revising the reference ''§ 173.301(a)(8)'' to correctly reference the outer packaging requirements for cylinders that are now contained in § 173.301(h).

Part 177

Section 177.840. As discussed earlier in this preamble, we are revising paragraph (a)(1) to apply the requirement that a cylinder fitted with a PRD must be in communication with the vapor space to Division 2.1 (flammable gas) material, only.

An appellant states that paragraph (a)(1), as written, prohibits the use of other freight as a means of securement to prevent movement of cylinders under normal conditions of transportation. Also read literally, the wording requires boxes containing cylinders to be securely attached to the motor vehicle. The appellant states that for-hire carriers cannot comply with the requirements. It was not our intent to require that the boxes be attached to the vehicle. We are revising the wording in this paragraph for clarity. However, as adopted in the August 8, 2002 final rule, the cylinders must be secured on the vehicle to prevent their being shifted, overturned or ejected from the vehicle under normal transportation conditions. Further, because we are continuing to allow the protection of the valves to be met by loading the cylinder in an upright position under § 173.301(h)(2) of this final rule, it is crucial that the cylinders be properly secured and restrained during transportation. Depending on the size and weight of the cylinders, the use of other freight as the sole means of securement may not be entirely sufficient.

Part 178

Section 178.46. An appellant requests that the maximum amount of lead (Pb) and bismuth (Bi) for aluminum alloy 6061 be changed to 0.003 percent from 0.005 percent for consistency with the values adopted in ISO 7866 and the UN Model Regulations. As we stated in the August 8, 2002 final rule, we adopted the limits based on chemical composition prescribed for unlisted metallic elements specified in Table 1 of ASTM B221. We plan to address cylinders manufactured to the UN Model Regulations in a future rulemaking.

Part 180

Section 180.203. NPGA requests a revision of the definition of ''commercially free of corrosive components'' to include a reference to Table 1 in the Gas Processors Association (GPA) Standard 2140. In the final rule, we provided for cylinders used for petroleum gases meeting the moisture and corroding component limits in ASTM D–1835, ''Standard Specification for Liquefied Petroleum (LP) Gases,'' to be given an external visual inspection in place of a pressure test. We adopted this provision in § 180.209, in paragraph (e) and the table in paragraph (g). NPGA states that GPA 2140, ''Liquefied Petroleum Gas Specification and Test Methods'' is a technically equivalent standard to ASTM D–1835 and contains the same provisions relative to moisture content and control of sulfur compounds as the ASTM standard. NPGA expresses concern that propane marketers whose supplier contracts may reference GPA 2140 rather than ASTM D–1835 could effectively be precluded from performing external visual inspections. We do not agree that the definition for ''commercially free of corrosive components'' should be revised. We are including a provision to recognize standards that are equivalent to ASTM D–1835 in § 180.209(e) and the table in paragraph(g).

An appellant requests a revision to the definition of ''Non-corrosive service'' to specifically include oxygen. The appellant states that including oxygen will allow cylinders used in oxygen service to be periodically retested once every 10 years instead of once every five years. We do not agree that the definition for ''non-corrosive service'' should be revised to include oxygen. Oxygen may be corrosive when it contains moisture or other impurities. Furthermore, current § 180.209(b) provides that a DOT 3A or 3AA cylinder may be requalified every ten years instead of five years if used for oxygen that is commercially free of corroding components.

An appellant requests a revision to the definition of ''Over-heated'' to add a statement that reads ''WARNING: This requirement pertains to an instantaneous heating. This requirement does not imply that heating cylinders at slightly lower temperatures for longer periods of time is an acceptable practice. Before heating cylinders for any purpose, the manufacturer should be contacted for time and temperature relationships and limits.'' The appellant states that there is a time requirement that must be considered when heating cylinders. The effects on the material are cumulative. Therefore, this warning statement alerts the user to the time interval associated with proposed temperature and to contact the manufacturer for heating operations. We agree that metal degradation is dependent on both temperature and time. However, we do not agree the definition of ''over-heated'' should be revised. The definition of ''over-heated'' in § 180.203 applies to the condemnation criteria for aluminum cylinders during the requalification process and not to instances which may require a cylinder to be heated. Therefore, revising the definition to include a warning statement is not warranted. We recommend that users contact the manufacturers for restrictions on heating aluminum cylinders.

Section 180.205. Paragraph (c) sets forth requirements for periodic requalification of cylinders. As discussed earlier in this preamble, we are revising paragraph (c)(4) to require the PRD to be in the vapor space of a cylinder only when it contains a Division 2.1 (flammable gas) material. Also as discussed earlier, in paragraph (f)(3), we are applying the operating tolerance requirements to CG–1, CG–4, and CG–5 PRDs only.

Paragraph (d) sets forth conditions requiring test and inspection of cylinders. An appellant requests a revision to state that the inspection and test are required when the cylinder shows evidence of dents, corrosion, cracked or abraded areas, leakage, thermal damage ''in excess of what is permitted by CGA Pamphlets C–6, C–6.1, C–6.2, C–6.3, C–8 or C–13.'' The appellant states that, as written, any of the listed conditions, regardless of how inconsequential, would require requalifying the cylinder. Therefore, the requested revision better reflects what is intended and current industry practice. We do not agree with the appellant. The requirement does not apply ''regardless of how inconsequential'' the condition of the cylinder. Rather, as stated, the requirement to perform a test and inspection applies to conditions that might render the cylinder ''unsafe for use in transportation.'' The requirement is retained.

Paragraph (f) sets forth the visual inspection requirements for cylinders. We are revising paragraph (f)(4), containing inspection requirements for cylinders made of aluminum alloy 6351–T6, to remove the wording ''in accordance with the cylinder manufacturer's written recommendations, which must be approved in writing by the Associate Administrator.'' Requalifiers are to inspect the neck and shoulder areas of these cylinders for evidence of sustained load cracking using any appropriate procedure. We are developing an NPRM to address the inspection of these cylinders.

Paragraph (g) sets forth the pressure test requirements for cylinders. In paragraph (g)(2), we are revising the reference ''0.1 cm^3'' to read ''0.1 cc'' because the acronym ''cc'' is a more recognizable unit of measure. In paragraph (g)(3)(ii), the reference ''0.1 cubic centimeter'' is removed and ''0.1 cc'' is added in its place for consistency with the change in paragraph (g)(2).

Section 180.209. In the table in paragraph (a), we are revising the heading to column 3 to read ''Requalification period (years)'' in place of ''Test period (years)'' to more accurately reflect that a requalification may be an inspection or a test.

In the August 8, 2002 final rule, we revised paragraph (b)(1)(ii) to allow cylinders containing ''fluorinated hydrocarbons, liquefied hydrocarbons, and mixtures thereof which are commercially free from corroding components'' and certain other gases to be requalified every ten years instead of every five years. An appellant states that chlorinated hydrocarbons have properties similar to fluorinated hydrocarbons and, therefore, should be listed. We agree and are adding an entry for ''chlorinated hydrocarbons and mixtures thereof that are commercially free from corroding components'' in paragraph (a)(1)(ii) in this final rule. For the same reason, we are adding an entry for chlorinated hydrocarbons in the table in paragraph (g). Also in the table in paragraph (g), we are correcting the entry ''Ethyleneimine, inhibited'' by replacing the word ''inhibited'' with the word ''stabilized.'' In addition, as stated earlier in the preamble discussion to § 180.203, we are revising the wording in § 180.209(e) and the table in paragraph (g) to recognize standards that are equivalent to ASTM D–1835.

In the August 8, 2002 final rule, we inadvertently omitted a requirement in former § 173.34(e)(15) stating that a DOT 3HT cylinder must be requalified in accordance with CGA Pamphlet C–8. We are redesignating current paragraph (k) as paragraph (l) and adding the provision in new paragraph (k) in this final rule.

Finally, in this section, we are correcting several section references.

Section 180.211. In paragraph (d)(1)(iii), we are correcting a section reference.

Section 180.215. In paragraph (b)(1), we are correcting the paragraph heading ''Pressure test records'' to read ''Calibration test records'' to correctly identify the records prescribed in this paragraph. The pressure test records are prescribed in paragraph (b)(2).

Regulatory 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. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

This final rule amends an August 8, 2002 final rule that made revision to requirements applicable to the maintenance, requalification, repair and use of DOT specification cylinders. A regulatory evaluation prepared for the August 8, 2002 final rule is available for review in the docket. The original regulatory evaluation was not modified because the amendments herein do not impose additional requirements and are not substantive changes to the final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant economic impact on a substantial number of small entities. This final rule imposes no new costs of compliance on the regulated industry and, in fact, should reduce overall costs of compliance. Based on the assessment in the original regulatory evaluation, I hereby certify that while this final rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. A detailed Regulatory Flexibility analysis for the August 8, 2002 final rule is available for review in the docket.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts state, local, and Indian tribe requirements but does not propose any regulation with substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain 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 items 2 and 5 above and preempts state, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This final rule is necessary to assure an acceptable level of safety for the transportation of hazardous materials in cylinders.

Federal hazardous materials transportation law provides at section 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 of this final rule is 90 days from publication of this final rule in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector. This rule is the least burdensome alternative to achieve the objective of the rule.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. The amendments contained in this final rule imposes no changes to the information collection and recordkeeping requirements contained in the August 8, 2002 final rule, which was approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and assigned control numbers 2137–0022 (approved through 09/30/2005) and 2137–0557 (approved through 12/31/2005).

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Environmental Assessment

This final rule relaxes certain provisions contained in an August 8, 2002 final rule. The August 8, 2002 final rule incorporates new cylinder technologies through new and updated incorporations by reference of consensus standards developed by CGA; increases flexibility for cylinder requalifiers, and users; and facilitates compliance with the HMR by clarifying and reorganizing regulatory requirements applicable to cylinders. In addition, the August 8, 2002 final rule improves the overall safety performance of DOT specification cylinders by addressing several identified safety problems. The August 8, 2002 final rule contains revisions to minimize unintentional releases of hazardous materials from cylinders during transportation and, therefore, will reduce environmental damage associated with such releases. To the extent that the revisions in this final rule maintain an equivalent level of safety for transportation of hazardous materials in cylinders, 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, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 177

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, and Reporting and recording requirements.

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

2. **Authority:** 49 U.S.C. 5101–5127; 44701; Sec. 212–213. Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45 and 1.53.

■ 3. In § 107.803, paragraph (e) is added to read as follows:

§ 107.803 Approval of independent inspection agency.

* * * * *

(e) After approval, the Associate Administrator may authorize, upon request, the independent inspection agency to perform other inspections and functions for which the Associate Administrator finds the applicant to be qualified. Such additional authorizations will be noted on each inspection agency's approval documents.

■ 4. In § 107.805, paragraph (g) is added to read as follows:

§ 107.805 Approval of cylinder requalifiers.

* * * * *

(g) Each holder of a current RIN shall report in writing any change in its name, address, ownership, testing equipment, or management or personnel performing any function under this section, to the Associate Administrator (DHM–32) within 20 days of the change.

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.

§ 171.12 [Amended]

■ 6. In § 171.12, paragraph (b)(15) is amended by removing the wording ''173.301(j) through (l)'' and adding ''173.301(j) through (m)'' in its place.

§ 171.12a [Amended]

■ 7. In § 171.12a, paragraph (b)(13) is amended by removing the wording

''173.301(i) and (j)'' and adding ''173.301(j) through (m)'' in its place.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 8. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.45 and 1.53.

■ 9. In § 173.40, paragraphs (b) and (d)(2) are revised to read as follows:

§ 173.40 General packaging requirements for toxic materials packaged in cylinders.

* * * * *

(b) *Outage and pressure requirements.* The pressure at 55 °C (131 °F) of Hazard Zone A and, after December 31, 2003, Hazard Zone B materials may not exceed the service pressure of the cylinder. Sufficient outage must be provided so that the cylinder will not be liquid full at 55 °C (131 °F).

* * * * *

(d) * * *

(2) Each cylinder with a valve must be equipped with a protective metal cap, other valve protection device, or an overpack which is sufficient to protect the valve from breakage or leakage resulting from a drop of 2.0 m (7 ft) onto a non-yielding surface, such as concrete or steel. Impact must be at an orientation most likely to cause damage.

* * * * *

■ 10. Section 173.163 is revised to read as follows:

§ 173.163 Hydrogen fluoride.

Hydrogen fluoride (hydrofluoric acid, anhydrous) must be packaged in a specification 3, 3A, 3AA, 3B, 3BN, 3E, or 4A cylinder; or a specification 4B, 4BA, or 4BW cylinder if the cylinder is not brazed. Filling density may not exceed 85 percent of the cylinder's water weight capacity. In place of the periodic volumetric expansion test, cylinders used in exclusive service may be given a complete external visual inspection in conformance with part 180, subpart C, of this subchapter, at the time such periodic requalification becomes due. Cylinders removed from hydrogen fluoride service must be condemned in accordance with § 180.205 of this subchapter and, at the direction of the owner, the cylinder may be rendered incapable of holding pressure.

§ 173.181 [Amended]

■ 11. In § 173.181, the last sentence in paragraph (a)(2) is amended by removing the reference ''§§ 173.34(d)(6) and 177.838(h)'' adding ''§ 177.838(h)'' in its place.

■ 12 In § 173.226, paragraph (a) is revised to read as follows:

§ 173.226 Materials poisonous by inhalation, Division 6.1, Packing Group 1, Hazard Zone A.

* * * * *

(a) In seamless specification cylinders conforming to the requirements of § 173.40. However, a welded cylinder filled before October 1, 2002, may be transported for reprocessing or disposal of the cylinder's contents until December 31, 2003.

* * * * *

■ 13. In § 173.228, paragraph (b) is revised to read as follows:

§ 173.228 Bromine pentafluoride or bromine trifluoride.

* * * * *

(b) A material in Hazard Zone A must be transported in a seamless specification cylinder conforming to the requirements of § 173.40. However, a welded cylinder filled before October 1, 2002, in accordance with the requirements of this subchapter in effect at the time of filling, may be transported for reprocessing or disposal of the cylinder's contents until December 31, 2003. No cylinder may be equipped with a pressure relief device.

§ 173.301 [Amended]

■ 14. In § 173.301, the following amendments are made:

■ a. Paragraph (a) is amended by removing the reference ''173.302 through 173.305'' and adding ''173.301a through 173.305'' in its place.

■ b. Paragraphs (a)(3), (f)(2), (f)(3), (g)(1) introductory text, (h)(2)(iv), (i)(3), and the beginning of the first sentence in paragraph (h)(3) introductory text, are revised.

■ c. Paragraph (m) is redesignated as paragraph (n) and a new paragraph (m) is added.

The revisions and additions read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical pressure vessels.

* * * * *

(a) * * *

(3) Pressure relief devices must be tested for leaks before a filled cylinder is shipped from the cylinder filling plant. It is expressly forbidden to repair a leaking fusible plug device where the leak is through the fusible metal or between the fusible metal and the opening in the plug body, except by removal and replacement of the pressure relief device.

* * * * *

(f) * * *

(2) After December 31, 2003, a pressure relief device, when installed, must be in communication with the vapor space of a cylinder containing a Division 2.1 (flammable gas) material.

(3) For a specification 3, 3A, 3AA, 3AL, 3AX, 3AXX, 3B, 3BN, or 3T cylinder filled with gases in other than Division 2.2, beginning with the first requalification due after December 31, 2003, the burst pressure of a CG–1, CG–4, or CG–5 pressure relief device must be at test pressure with a tolerance of plus zero to minus 10%. An additional 5% tolerance is allowed when a combined rupture disk is placed inside a holder. This requirement does not apply if a CG–2, CG–3 or CG–9 thermally activated relief device or a CG–7 reclosing pressure valve is used on the cylinder.

* * * * *

(g) * * *

(1) Cylinder manifolding is authorized only under conditions prescribed in this paragraph (g). Manifolded cylinders must be supported and held together as a unit by structurally adequate means. Except for Division 2.2 materials, each cylinder must be equipped with an individual shutoff valve that must be tightly closed while in transit. Manifold branch lines must be sufficiently flexible to prevent damage to the valves that otherwise might result from the use of rigid branch lines. Each cylinder must be individually equipped with a pressure relief device as required in paragraph (f) of this section, except that pressure relief devices on manifolded horizontal cylinders that are mounted on a motor vehicle or framework may be selected as to type, location, and quantity according to the lowest marked pressure limit of an individual cylinder in the manifolded unit. The pressure relief devices selected for the manifolded unit must have been tested in accordance with CGA pamphlets S–1.1 and S–7 (incorporated by reference; see § 171.7 of this subchapter). Pressure relief devices on manifolded horizontal cylinders filled with a compressed gas must be arranged to discharge unobstructed to the open air. In addition, for Division 2.1 (flammable gas) material, the PRDs must be arranged to discharge upward to prevent any escaping gas from contacting personnel or any adjacent cylinders. Valves and pressure relief devices on manifolded cylinders filled with a compressed gas must be protected from damage by framing, a cabinet, or other method. Manifolding is authorized for cylinders containing the following gases:

* * * * *

(h) * * *

* * * * *

(2) For cylinders manufactured on or after October 1, 2007, * * *

* * * * *

(iv) By loading the cylinders in an upright position and securely bracing the cylinders in rail cars or motor vehicles, when loaded by the consignor and unloaded by the consignee.

(i) * * *

(3) The pressure relief device must be arranged to discharge unobstructed to the open air. In addition, for Division 2.1 (flammable gas) material, the pressure relief devices must be arranged to discharge upward to prevent any escaping gas from contacting personnel or any adjacent cylinders.

* * * * *

(m) *Canadian cylinders in domestic use.* A Canadian Transport Commission (CTC) specification cylinder manufactured, originally marked and approved in accordance with the CTC regulations and in full conformance with the Canadian Transport of Dangerous Goods (TDG) Regulations is authorized for the transportation of a hazardous material to, from or within the United States under the following conditions:

(1) The CTC specification corresponds with a DOT specification and the cylinder markings are the same as those specified in this subchapter except that they were originally marked with the letters ''CTC'' in place of ''DOT'';

(2) The cylinder has been requalified under a program authorized by the Canadian TDG regulations or requalified in accordance with the requirements in § 180.205 within the prescribed requalification period provided for the corresponding DOT specification;

(3) When the regulations authorize a cylinder for a specific hazardous material with a specification marking prefix of ''DOT'', a cylinder marked ''CTC'' which otherwise bears the same markings that would be required of the specified ''DOT'' cylinder may be used; and

(4) Transport of the cylinder and the material it contains is in all other respects in conformance with the requirements of this subchapter (*e.g.* valve protection, filling requirements, operational requirements, etc.).

* * * * *

■ 15. In § 173.301a, paragraph (d)(3) is revised to read as follows:

§ 173.301a Additional general requirements for shipment of specification cylinders.

* * * * *

(d) * * *

(3) The pressure at 55 °C (131 °F) of Hazard Zone A and, after December 31, 2003, Hazard Zone B materials, may not exceed the service pressure of the cylinder. Sufficient outage must be provided so that the cylinder will not be liquid full at 55 °C (131 °F).

* * * * *

§ 173.304 [Amended]

■ 16. In § 173.304, in paragraphs (b) and (d), the temperature ''54 °C (130 °F)'' is revised to read ''55 °C (131 °F)'' each place it appears.

■ 17. In § 173.304a, the following amendments are made:

■ a. In the table in paragraph (a)(2):

■ 1. The table heading is revised;

■ 2. For the entry ''Dichlorodifluoromethane and difluoroethane mixture (constant boiling mixture) (R–500) (see Note 8)'', in column 2, the wording ''Not liquid full at 130 °F'' is revised to read ''Not liquid full at 131 °F'';

■ 3. For the entry ''Hydrogen sulfide (see Note 10)'' in column one, the wording ''see Note 10'' is revised to read ''see Notes 10 and 14'';

■ 4. For the entry ''Insecticide, gases liquefied (see Notes 8 and 12)'', in column 2, the wording ''Not liquid full at 130 °F'' is removed and the wording ''Not liquid full at 131 °F'' is added in its place;

■ 5. For the entry ''Liquefied nonflammable gases, other than classified flammable, corrosive, toxic & mixtures or solution thereof filled w/nitrogen, carbon dioxide, or air (Notes 7 and 8)'', in column 2, the wording ''Not liquid full at 130 °F'' is revised to read ''Not liquid full at 131 °F'';

■ 6. For the entry ''Methyl acetylene-propadiene, mixtures, stabilized DOT–3A240; (see Note 5)'', in column 2, the wording ''Not liquid at 130 °F'' is revised to read ''Not liquid full at 131 °F'';

■ 7. For the entry ''Tetrafluoroethylene/inhibit'', in column 1, the wording is revised to read ''Tetrafluoroethylene, stabilized'';

■ 8. For the entry ''Trifluorochloroethylene, inhibited'', in column 1, the wording is revised to read ''Trifluorochloroethylene, stabilized'';

■ 9. For the entry ''Vinyl fluoride, inhibited'', in column 1, the wording is revised to read ''Vinyl fluoride, stabilized'';

■ 10. For the entry ''Vinyl methyl ether, inhibited (see Note 5)'', in column 1, the wording is revised to read ''Vinyl methyl ether, stabilized''; and

■ 11. Following the table, Note 14 is added.

■ b. Paragraph (c) and the first sentence in paragraph (d)(4) are revised.

The additions and revisions read as follows:

§ 173.304a Additional requirements for shipment of liquefied compressed gases in specification cylinders.

(a) * * *

(2) * * *

Kind of gas	Maximum permitted filling density (percent) (see Note 1)	Packaging marked as shown in this column or of the same type with higher service pressure must be used, except as provided in §§ 173.301(l), 173.301a(e), and 180.205(a) (see notes following table)
* * *	*	* * *
Dichlorodifluoromethane and difluoroethane mixture (constant boiling mixture) (R–500) (see Note 8).	Not liquid full at 131 °F	DOT–3A240; DOT–3AA240; DOT–3B240; DOT–3E1800; DOT–4A240; DOT–4B240; DOT–4BA240; DOT–4BW240; DOT–4E240; DOT–9; DOT–39.
* * *	*	* * *
Hydrogen sulfide (see Notes 10 and 14)	62.5	DOT–3A480; DOT–3AA480; DOT–3B480; DOT–4A480; DOT–4B480; DOT–4BA480; DOT–4BW480.; DOT–3E1800; DOT–3AL480.
Insecticide, gases liquefied (see Notes 8 and 12)	Not liquid full at 131 °F	DOT–3A300; DOT–3AA300; DOT–3B300; DOT–4B300; DOT–4BA300; DOT–4BW300; DOT–9; DOT–40; DOT–41; DOT–3E1800.
Liquefied nonflammable gases, other than classified flammable, corrosive, toxic & mixtures or solution thereof filled w/nitrogen, carbon dioxide, or air (Notes 7 and 8).	Not liquid full at 131 °F	Specification packaging authorized in paragraph (a)(1) of this section and DOT–3HT; DOT 4D; DOT–4DA; DOT–4DS.

Kind of gas	Maximum permitted filling density (percent) (see Note 1)	Packaging marked as shown in this column or of the same type with higher service pressure must be used, except as provided in §§ 173.301(l), 173.301a(e), and 180.205(a) (see notes following table)
Methyl acetylene-propadiene, mixtures, stabilized DOT–3A240; (see Note 5).	Not liquid full at 131 °F	DOT–4B240 without brazed seams; DOT-4BA240 without brazed seams; DOT–3A240; DOT–3AA240; DOT–3B240; DOT–3E1800; DOT–4BW240; DOT–4E240; DOT–4B240ET; DOT–4; DOT–41; DOT–3AL240.
* * *	*	* * *
Tetrafluoroethylene, stabilized	90	DOT–3A1200; DOT–3AA1200; DOT–3E1800.
Trifluorochloroethylene, stabilized	115	DOT–3A300; DOT–3AA300; DOT–3B300; DOT–4A300; DOT–4B300; DOT–4BA300; DOT–4BW300; DOT–3E1800.
* * *	*	* * *
Vinyl fluoride, stabilized	62	DOT–3A1800; DOT–3AA1800; DOT–3E1800; DOT–3AL1800.
Vinyl methyl ether, stabilized (see Note 5)	68	DOT–4B150, without brazed seams; DOT–4BA225 without brazed seams; DOT–4BW225; DOT–3A150; DOT–3AA150; DOT–3B1800; DOT–3E1800.

* * * * *

Note 14: The use of DOT specification cylinder with a marked service pressure of 480 psi is authorized until December 31, 2003.

* * * * *

(c) *Verification of content in cylinder.* Except as noted in paragraph (d)(4) of this section, the amount of liquefied gas filled into a cylinder must be by weight or, when the gas is lower in pressure than required for liquefaction, a pressure-temperature chart for the specific gas may be used to ensure that the service pressure at 55 °C (131 °F) will not exceed 5/4 of the service pressure at 21 °C (70 °F). The weight of liquefied gas filled into the cylinder also must be checked, after disconnecting the cylinder from the filling line, by the use of an accurate scale.

(d) * * *

(4) *Verification of content.* A cylinder with a water capacity of 90.72 kg (200 lb) or more and for use with a liquefied petroleum gas with a specific gravity of 0.504 or greater at 16 °C (60 °F) may have the quantity of its contents determined by using a fixed length dip tube gauging device. * * *

* * * * *

§ 173.305 [Amended]

■ 18. In § 173.305, in paragraph (b), the term ''130 °F'' is revised to read ''131 °F''.

■ 19. In § 173.306, paragraph (g)(5) is revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(g) * * *

(5) Each tank must be overpacked in a strong outer packaging in accordance with § 173.301(h).

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 20. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 21. In § 177.840, paragraph (a)(1) is revised to read as follows:

§ 177.840 Class 2 (gases) materials.

(a) * * *

(1) *Cylinders.* Cylinders containing Class 2 gases must be securely restrained in an upright or horizontal position, loaded in racks, or packed in boxes or crates to prevent the cylinders from being shifted, overturned or ejected from the motor vehicle under normal transportation conditions. However, after December 31, 2003, a pressure relief device, when installed, must be in communication with the vapor space of a cylinder containing a Division 2.1 (flammable gas) material.

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 22. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 23. In § 180.205, the following changes are made:

■ a. Paragraphs (c)(4) and (f)(4) are revised.

■ b. In paragraph (g)(2), the reference ''0.1 cm^3'' is removed and ''0.1 cc'' is added in its place.

■ c. In paragraph (g)(3)(ii), the reference ''0.1 cubic centimeter'' is removed and ''0.1 cc'' is added in its place.

The revisions read as follows:

§ 180.205 General requirements for requalification of cylinders.

* * * * *

(c) * * *

(4) For a specification 3, 3A, 3AA, 3AL, 3AX, 3AXX, 3B, 3BN, or 3T cylinder filled with gases in other than Division 2.2, from the first requalification due on or after December 31, 2003, the burst pressure of a CG–1, CG–4, or CG–5 pressure relief device must be at test pressure with a tolerance of plus zero to minus 10%. An additional 5% tolerance is allowed when a combined rupture disc is placed inside a holder. This requirement does not apply if a CG–2, CG–3 or CG–9 thermally activated relief device or a CG–7 reclosing pressure valve is used on the cylinder.

* * * * *

(f) * * *

(4) In addition to other requirements prescribed in this paragraph (f), a specification or exemption cylinder made of aluminum alloy 6351–T6 must be inspected for evidence of sustained load cracking (SLC) in the neck and shoulder area.

* * * * *

■ 24. In § 180.209, the following amendments are made:

■ a. In the table in paragraph (a)(1):

■ 1. In Column 3, the heading ''Test period (years)'' is revised to read ''Requalification period (years)';

■ 2. For the entry ''3HT'', in column 3, the wording ''3 (*see* §§ 180.209(i) and 180.213(c))'' is revised to read ''3 (*see* §§ 180.209(k) and 180.213(c))';

■ 3. For the entry ''4AA480'', in column 3, the wording ''5 or 10 (*see* § 180.209(e)(14)'' is revised to read ''5 or 10 (*see* § 180.209(h))'';

■ 4. For the entry ''Foreign cylinder (*see* § 173.301(j) of this subchapter for restrictions on use).'', in column 3, the wording

''5 (*see* §§ 180.209(k) and 180.213(d)(iii))'' is revised to read ''5 (*see* §§ 180.209(l) and 180.213(d)(2))''; and

■ 5. In note 2 following the table, the reference ''§ 173.301(e)(1)'' is revised to read ''§ 173.301a(b)''.

■ b. In paragraph (b)(1)(ii), the wording ''fluorinated hydrocarbons, liquefied hydrocarbons, and mixtures thereof that are commercially free from corroding components;'' is revised to read ''chlorinated hydrocarbons, fluorinated hydrocarbons, liquefied hydrocarbons, and mixtures thereof that are commercially free from corroding components;''.

■ c. Paragraph (e) is revised.

■ d. In the table in paragraph (g), a new entry is added immediately following the third entry.

■ e. In the table in paragraph (g), the entry for ''Liquefied petroleum gas'' and the last entry are revised.

■ f. Paragraph (k) is redesignated as paragraph (l) and a new paragraph (k) is added.

The additions and revisions read as follows:

§ 180.209 General requirements for requalification of cylinders.

(a) * * *

(1) * * *

TABLE 1.—REQUALIFICATION OF CYLINDERS [1]

Specification under which cylinder was made	Minimum test pressure (psig) [2]	Requalification period (years)
* *	* *	* *
3HT	5/3 times service pressure	3 (*see* §§ 180.209(k) and 180.213(c)).
* *	* *	* *
4AA480	2 times service pressure (*see* § 180.209(g))	5 or 10 (*see* § 180.209(h)).
* *	* *	* *
Foreign cylinder (*see* § 173.301(j) of this subchapter for restrictions on use).	As marked on cylinder, but not less than 5/3 of any service or working pressure marking.	5 (*see* §§ 180.209(l) and 180.213(d)(2)).

* * * * *

[2] For cylinders not marked with a service pressure, *see* § 173.301a(b) of this subchapter.

* * * * *

(e) *Proof pressure test* A cylinder made in conformance with specifications DOT 4B, 4BA, 4BW, or 4E used exclusively for: liquefied petroleum gas that meets the detail requirement limits in Table I of ASTM D 1835, ''Standard Specification for Liquefied Petroleum (LP) Gases'' (incorporated by reference; see § 171.7 of this subchapter) or an equivalent standard containing the same limits; anhydrous dimethylamine; anhydrous methylamine; anhydrous trimethylamine; methyl chloride; methylacetylene-propadiene stabilized; or dichlorodifluoromethane, difluoroethane, difluorochloroethane, chlorodifluoromethane, chlorotetrafluoroethane, trifluorochloroethylene, or mixture thereof, or mixtures of one or more with trichlorofluoromethane; and commercially free from corroding components and protected externally by a suitable corrosion-resistant coating (such as galvanizing or painting) may be requalified by volumetric expansion testing every 12 years instead of every five years. As an alternative, the cylinder may be subjected to a proof pressure test at least two times the marked service pressure, but this latter type of test must be repeated every seven years after expiration of the first 12-year period. When subjected to a proof pressure test, the cylinder must be carefully examined under test pressure and removed from service if a leak or defect is found.

* * * * *

(g) * * *

Cylinders conforming to—	Used exclusively for—
* * * *	* * *
DOT 3A, DOT 3AA, DOT 3A480X, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E.	Chlorinated hydrocarbons and mixtures thereof that are commercially free from corroding components.
* * * *	* * *
DOT 3A, DOT 3AA, DOT 3A480X, DOT 3B, DOT 4B, DOT 4BA, DOT 4BW, DOT 4E.	Liquefied petroleum gas that meets the detail requirements limits in Table 1 of ASTM 1835, Standard Specification for Liquefied Petroleum (LP) Gases (incorporated by reference; see § 171.7 of this subchapter) or an equivalent standard containing the same limits.
* * * *	* * *
DOT 4B240, DOT 4BW240	Ethyleneimine, stabilized.
* * * *	* * *

* * * * *

(k) *3HT cylinders.* In addition to the other requirements of this section, a cylinder marked DOT–3HT must be requalified in accordance with CGA Pamphlet C–8.

§ 180.211 [Amended]

■ 25. In § 180.211, in paragraph (d)(1)(iii), the reference ''180.215(d)(2)'' is removed and ''180.215(c)(2)'' is added in its place.

§ 180.215 [Amended]

■ 26. In § 180.215, in paragraph(b)(1), the heading ''Pressure test records.'' is removed and ''Calibration test records.'' is added in its place.

Issued in Washington DC on May 2, 2003, under authority delegated in 49 CFR part 1.

Edward A. Brigham,

Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 03–11334 Filed 5–5–03; 3:52 pm]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2003–14711]

RIN 2127–AI49

Federal Motor Vehicle Safety Standards; Child Restraint Anchorage Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; interim final rule; request for comments.

SUMMARY: This document amends the Federal motor vehicle safety standard on child restraint anchorage systems to: Reflect an extension of the date by which final-stage manufacturers and alterers were required to install tether anchorages in vehicles subject to the standard; and temporarily exclude ''funeral coaches'' (as defined in this document) from the standard altogether. It responds to requests from the Recreation Vehicle Industry Association and from Accubuilt, Inc., respectively. This document adopts the first amendment on a final basis and the second on an interim final basis. The agency also requests comments on the second amendment.

DATES: This rule is effective May 8, 2003. The final rule reflects that the mandatory compliance date for installing tether anchorages in vehicles produced by final-stage manufacturers and alterers was changed from September 1, 2000, to May 1, 2001. This rule excludes funeral coaches from Federal Motor Vehicle Safety Standard No. 225 until May 10, 2004. After reviewing the comments received on this document, NHTSA will decide whether to exclude funeral coaches from the standard on a permanent basis. Because these amendments relieve restrictions on a class of manufacturer that comprises a substantial number of small businesses, we have determined that it is in the public interest to make the changes effective immediately.

You should submit your comments early enough to ensure that Docket Management receives them not later than July 7, 2003.

ADDRESSES: Submit written comments to the Docket Management System, U.S. Department of Transportation, PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should refer to Docket Number (NHTSA–7938) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard.

Comments may also be submitted to the docket electronically by logging onto the Docket Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' to obtain instructions for filing the comment electronically. In every case, the comment should refer to the docket number.

The Docket Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Docket Management System web site at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For non-legal questions, Mike Huntley, NHTSA Office of Crashworthiness Standards, Special Vehicle and Systems Division, 400 Seventh St., SW., Washington, DC 20590 (telephone 202–366–0029). For legal questions, Deirdre Fujita, NHTSA Office of Chief Counsel, 400 Seventh St., SW., Washington, DC 20590 (telephone 202–366–2992).

SUPPLEMENTARY INFORMATION:

I. ''Petition for Extraordinary Relief'' From the Recreation Vehicle Industry Association

Background

On March 5, 1999, NHTSA published a final rule establishing a new Federal motor vehicle safety standard that required motor vehicle manufacturers to install child restraint anchorage systems that are standardized and independent of the vehicle seat belts.[1] (64 FR 10786) (Docket No. 98–3390, Notice 2) (Federal Motor Vehicle Safety Standard No. 225, 49 CFR 571.225.) Each system is composed of three anchorages: Two lower anchorages and one upper anchorage. The lower anchorages are two 6 millimeter (mm) round bars fastened to the vehicle 720 mm apart and located at the intersection of the vehicle seat cushion and seat back. The upper anchorage is a permanent structure to which the hook of a child restraint upper tether may be attached for the purpose of transferring load from the child restraint to the vehicle structure.

Phase-In Requirements

In the notice of proposed rulemaking (NPRM) for the March 1999 final rule, we recognized that upper tether anchorages could be installed at an earlier date than the lower anchorages (February 20, 1997; 62 FR 7858). We also recognized that more time would be needed to implement a requirement for a rigid bar lower anchorage system (which the final rule ultimately adopted) than an alternative (flexible webbing) lower anchorage system the agency was considering at the time. We requested comments on whether phasing in the requirement for the lower anchorages would be appropriate, and how long a period would be needed to achieve full implementation. We did not raise the possibility of either phasing in the requirement for upper tether anchorages, or delaying the effective date of the upper tether anchorage requirement for vehicles manufactured in more than one stage (*see* 62 FR at 7874).

Based on the information we received, we adopted a three-year phase-in schedule for the lower anchorages in S14 of Standard No. 225. S14 is titled ''Lower anchorages phase-in requirements for vehicles manufactured on or after September 1, 2000 and before September 1, 2002.'' In S14.3, which we titled ''Alternative phase-in schedule for final-stage manufacturers and alterers,'' we specified that a final-stage manufacturer or alterer may, at its option, comply with an alternative requirement during the phase-in. The alternative, specified in S14.3(a), stated that the vehicles ''are not required to comply with the requirements specified

[1] *See* 64 FR 47566; August 31, 1999 (Docket No. NHTSA–99–6160) and 65 FR 46628; July 31, 2000 (Docket No. NHTSA–7648) for later amendments of the rule.

in this standard'' during that two-year period.[2] The reference in S14.3(a) to ''requirements specified in this standard'' was intended to refer to only the requirement to install the lower anchorages, and not to both that requirement and the requirement to install tether anchorages. However, RVIA interpreted S14.3 to exclude vehicles produced by final-stage manufacturers and alterers between September 1, 2000 and September 1, 2002 from both the lower anchorage and the tether anchorage requirements.

RVIA Petition

RVIA notified us in August 2000 that it had informed its members (conversion vehicle manufacturers and alterers who modify vans, pickup trucks and sport utility vehicles)[3] that their vehicles were excluded from both tether anchorage and lower anchorage requirements until September 1, 2002, and had only learned in August 2000 that this advice was erroneous. RVIA further stated that conversion vehicle manufacturers would not be able to meet the September 1, 2000, compliance date for installation of tether anchorages, having relied on that advice. RVIA requested that NHTSA stay the compliance date for tether anchorages for 8 months, until May 1, 2001, for multistage manufacturers and alterers of conversion vehicles. RVIA stated that 8 months was needed to design, test, and manufacture tether anchorages that would satisfy the standard's tether anchorage requirements.

Agency Decision on RVIA Petition

We decided to allow multistage manufacturers and alterers until May 1, 2001, to install tether anchorages in their vehicles. We promptly notified RVIA of that decision and placed that notification in the public docket.[4] The phrase ''[requirements specified] in this standard'' in S14.3 lent itself to misinterpretation, when read apart from the context of S14, and contributed to RVIA's erroneous advice. Instead of penalizing the affected manufacturers which acted in accordance with RVIA's advice, we decided to postpone the effective date of the tether anchorage requirement to provide the affected manufacturers time to meet the requirement. The affected manufacturers are typically small volume companies. RVIA stated that ''[m]ost of these companies had neither the technical staffs nor the resources to respond rapidly to rule changes,'' and none had known about the September 1, 2000, compliance date for installing tether anchorages. In view of the fact that most of the companies are small businesses that had acted in reliance on RVIA's advice, we believed that providing relief to the manufacturers was warranted. If a delay had not been granted, the manufacturers would have had to stop production until compliance could be achieved. Cessation of production would have significant economic effects on the small businesses. For these reasons, we concluded that it was in the public interest to postpone the compliance date of the requirement for vehicles produced by final-stage manufacturers and alterers until May 1, 2001.[5] Today's document clarifies the language in S14, and similar language in S13.

II. Petition for Rulemaking From Accubuilt on Funeral Coaches

Standard No. 225 requires a vehicle to be equipped with tether anchorages in front passenger seating positions if: (1) The vehicle lacks a rear designated seating position (see S4.3(b)(3) and S4.4(c)); and (2) there is an air bag and no air bag on-off switch in the front passenger seating position. Accubuilt, a final-stage manufacturer of funeral coaches, submitted a petition for rulemaking requesting NHTSA to exclude funeral coaches from the requirement. Accubuilt stated that: ''[s]ince a Funeral Coach is a single purpose vehicle, transporting a body and casket, children do not ride in the front seat.''

Agency Decision on Accubuilt Request

It is implicit from Accubuilt's petition that it would be appropriate to exclude funeral coaches from the requirement when the coaches only have one row of occupant seats, *i.e.*, the front row. We agree with Accubuilt that it is unlikely that child restraint systems would be installed in such a funeral coach. We are thus excluding ''funeral coaches'' from the standard.

To implement this exclusion, we are adding a definition of ''funeral coach'' to Standard No. 225. Accubuilt stated that a funeral coach is a ''single purpose vehicle'' equipped with heavy duty components to handle the additional mass of a body and casket. We were further informed by Accubuilt that manufacturers of funeral coaches conform to an industry standard that requires ''front and rear stops'' in the interior of the coach to keep the casket stationary. We are incorporating that information into the definition.

At the same time, while Accubuilt's vehicles apparently have only 1 row of seats, it is conceivable that a funeral coach could be built with rear seating positions in which a young child might ride. We do not believe that a coach that has rear seating positions should be excluded from the standard, since the vehicle could be used to transport a child who should be in a child restraint. Therefore, based on the above, we are defining ''funeral coach'' as ''a vehicle that contains only a front row of occupant seats, is designed exclusively for transporting a body and casket and that is equipped with features to secure a casket in place during operation of the vehicle.'' Comments are requested on whether the definition is inclusive of all funeral coaches with no rear seating positions and whether it excludes any vehicles that should be subject to the requirements of Standard No. 225.

We have also determined that this amendment relieves an unnecessary restriction on a group of small manufacturers. Accordingly, NHTSA finds for good cause that an immediate exclusion of funeral coaches from the standard is in the public interest, and thus we are issuing this interim final rule. We are limiting the exclusion to a period ending one year after the publication of this rule. NHTSA will review the comments we receive on this document to determine whether to exclude funeral coaches from the standard on a permanent basis.

III. Enforcement Policy Statement

This agency will not take any enforcement against any multi-stage vehicle manufacturer or alterer for not

[2] This paragraph was later changed to S14.3(a)(2). *See* 65 FR 46628, 46642, July 31, 2000.

[3] RVIA stated that there are 67 conversion vehicle manufacturer members, with an aggregate annual production of approximately 90,000 vehicles. RVIA stated that, with few exceptions, these companies are small volume manufacturers that each produce fewer than 5,000 total vehicles annually.

[4] In response to RVIA's petition, NHTSA wrote to RVIA on September 26, 2000, stating that it would publish a **Federal Register** document extending, until May 1, 2001, the date by which final-stage manufacturers and alters must install tether anchorage in affected vehicles. *See* docket 7648 (document 7648–6).

[5] Mr. Harley Holt asked NHTSA about the degree to which anchorages voluntarily installed by final-stage manufacturers and alterers were subject to the requirements of Standard No. 225. Our answer was that the provisions of S4.1 as they relate to voluntarily-installed anchorages still applied. Thus, if a final-stage manufacturer or alterer voluntarily installed a tether anchorage system (or full child restraint anchorage system) in a vehicle from September 1, 1999 to April 30, 2001, the anchorage system would have to meet the configuration, location, marking and strength requirements of the standard. S4.1 also requires that information on using those anchorages must be provided to the vehicle owner. It is also our view that during the same period, a final-stage manufacturer or alterer voluntarily installing tether anchorages could have installed fewer than the minimum number of anchorages required by S4.3 and S4.5. On vehicles produced on or after May 1, 2001, the requisite number of anchorages must be installed.

installing tether anchorages in vehicles certified prior to May 1, 2001. Likewise, it will not take any enforcement action against any manufacturer of funeral coaches for not installing a child restraint anchorage system in the front seats of funeral coaches manufactured prior to the date one year after the publication of this rule.

IV. Rulemaking Analyses and Notices

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not ''significant'' under them. This document amends Standard No. 225 to reflect the staying of the compliance date of one aspect of the Standard as it applies to final stage manufacturers and alterers, and excludes funeral coaches from the standard for a period ending 1 year after the publication of this rule. There are no additional costs associated with this final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. It amends the Standard to reflect the staying of the compliance date of the tether anchorage requirement as applied to final stage manufacturers and alterers, and for that reason affects a number of small entities. A decision not to stay the compliance date would have significantly affected the entities since the manufacturers could not have produced their vehicles until the tether anchorage requirements in question were met. We provided more time to the manufacturers to facilitate their compliance with the standard.

Executive Order 13132 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 13132, and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 12778 (Civil Justice Reform)

This rule will not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule will not preempt the states from adopting laws or regulations on the same subject, except that it will preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1999–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may word search the Adobe pdf version of a comment by clicking on the binocular symbol (Acrobat Find) and typing in a search term. You may also download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you

periodically check the Docket for new material.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.225 is amended by:
■ a. Revising S2;
■ b. Amending S3 by adding, in alphabetical order, a definition for ''Funeral coach'';
■ c. Revising the introductory text of S4.3(b);
■ d. Revising the title of S13 and adding S13.3; and
■ e. Revising S14.3(a).

The revised and added text read as follows:

571.225 Standard No. 225; Child restraint anchorage systems.

* * * * *

S2. *Application.* This standard applies to passenger cars; to trucks and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 3,855 kilograms (8,500 pounds) or less; and to buses (including school buses) with a GVWR of 4,536 kg (10,000 lb) or less. This standard does not apply to walk-in van-type vehicles, vehicles manufactured to be sold exclusively to the U.S. Postal Service, shuttle buses, and funeral coaches.

S3. *Definitions.*

* * * * *

Funeral coach means a vehicle that contains only a front row of occupant seats, is designed exclusively for transporting a body and casket and that is equipped with features to secure a casket in place during operation of the vehicle.

* * * * *

S4.3 * * *

(b) Each vehicle, including a vehicle that is counted toward the percentage of a manufacturer's yearly production required to be equipped with child restraint anchorage systems, shall be equipped as described in S4.3(b)(1), (2) or (3), subject to S13.

* * * * *

S13. *Tether anchorage phase-in requirements.*

* * * * *

S13.3 Until May 1, 2001, vehicles manufactured by a final-stage manufacturer or alterer need not be equipped with the tether anchorages required by S4.3 of this standard. Vehicles manufactured by a final-stage manufacturer or alterer on or after May 1, 2001 must be equipped with the tether anchorages specified in S4.3.

* * * * *

S14.3 * * *—(a) *Final-stage manufacturers and alterers.* A final-stage manufacturer or alterer may, at its option, comply with the requirements set forth in S14.3(a)(1) and (2), instead of the requirements set forth in S14.1.1 through S14.1.2.

(1) Vehicles manufactured on or after September 1, 2000 and before September 1, 2002 are not required to be equipped with the lower anchorages specified in this standard.

(2) Vehicles manufactured on or after September 1, 2002 must be equipped with the lower anchorages specified in this standard.

* * * * *

Issued on May 1, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–11293 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307 3037–02; I.D. 042903A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Modification of a closure.

SUMMARY: NMFS is reopening directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to utilize the amount of the second seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 12, 2003, through 1200 hrs, A.l.t., May 21, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The amount of the second seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI was established as 195 metric tons by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003). In accordance with § 679.21(e)(7)(v), the directed fishery for yellowfin sole by vessels using trawl gear was closed effective 1200 hrs, A.l.t., April 17, 2003 (68 FR 19465, April 21, 2003) because it was expected that the second seasonal apportionment of the trawl halibut bycatch allowance specified for the yellowfin sole fishery category would be caught.

NMFS has determined that as of April 19, 2003, the remaining amount of the second seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category is 73 metric tons. Therefore, NMFS is terminating the previous closure and is re-opening directed fishing for yellowfin sole by vessels using trawl gear in the BSAI effective 1200 hrs, A.l.t., May 12, 2003.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is

contrary to the public interest. This requirement is contrary to the public interest as it would delay the opening of the fishery, not allow for the full utilization of the second seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 2, 2003.

Bruce C, Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–11482 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020718172–2303–02; I.D. 043003A]

Fisheries of the Exclusive Economic Zone Off Alaska; Chiniak Gully Research Area Opening for the Groundfish Trawl Fisheries of the Gulf of Alaska

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: The Administrator, Alaska Region, NMFS (Regional Administrator) proposes to open the Chiniak Gully Research Area in the Gulf of Alaska (GOA) to directed fishing for groundfish using trawl gear from August 1, 2003, through September 20, 2003. NMFS' Alaska Fisheries Science Center (AFSC) will not conduct research in this area in 2003. Therefore, the closure of the Chiniak Gully Research Area is not needed. This action is intended to relieve an unnecessary restriction on groundfish trawl fisheries and allow the optimum utilization of fishery resources, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received at the following address no later than 4:30 p.m., A.l.t., June 6, 2003.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801. Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) for the regulatory amendment to permit an investigation of the effect of commercial fishing on Walleye pollock distribution and abundance in localized areas off the east side of Kodiak Island, may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, Sustainable Fisheries Division, Alaska Region, 907–586–7228 or email at *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce under authority of the Magnuson-Stevens Fisheries Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Background

In April 2001, the Council endorsed a research project proposed by the AFSC in the Chiniak Gully off Kodiak Island to determine the effect of pollock fisheries on pollock school dynamics and the likelihood of localized depletions of Steller sea lion pollock prey. The research project requires the closure of the Chiniak Gully Research Area to trawl fishing from August 1 to no later than September 20 in the years 2001 through 2004. A detailed description of the research project is provided in the EA/RIR/FRFA. For copies of this document, please contact NMFS (see **ADDRESSES**). The trawl closure necessary for this research project was implemented by emergency interim rules in 2001 (66 FR 37167, July 17, 2001) and in 2002 (67 FR 956, January 8, 2002), and by final rule in 2003 (68 FR 204, January 2, 2003).

Pursuant to § 679.22(b)(3)(ii)(B), the Regional Administrator may rescind the trawl closure of the Chiniak Gully Research Area by publishing notification in the **Federal Register** prior to September 20. Because the AFSC will not be conducting research in the Chiniak Gully Research Area in 2003, the Regional Administrator is proposing to rescind the closure specified in § 679.22(b)(3)(ii)(A) for August 1, 2003, through September 20, 2003. The 2003 closure would unnecessarily restrict the trawl groundfish fisheries because no research will be conducted this year. Rescinding the 2003 trawl closure will allow vessels participating in groundfish trawl fisheries to harvest their total allowable catch amounts without the operational constraints imposed by the closure.

The effective date of this action would be August 1, 2003, through September 20, 2003.

Classification

This action responds to the best available information recently obtained from the AFSC. Without this inseason adjustment, NMFS could not allow directed fishing for groundfish using trawl gear in the Chiniak Gully Research Area from August 1 through September 20, unnecessarily restricting the groundfish trawl fisheries. Interested persons are invited to submit written comments on this action to the above address until June 6, 2003.This action is pursuant to § 679.22 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 2, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–11483 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 89
Thursday, May 8, 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.

FEDERAL TRADE COMMISSION

16 CFR Part 309

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''Commission'' or ''FTC'') is commencing a rulemaking proceeding to amend the alternative fueled vehicle (''AFV'') label specified in the Commission's rule concerning Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles (''Rule''). The Commission proposes amending the Rule's AFV label for new vehicles by either updating or deleting the Environmental Protection Agency (''EPA'') emission certification standards the Rule requires be disclosed, and by adding a reference to EPA's green vehicle guide. EPA's guide, located on its website at *http://www.epa.gov/greenvehicle,* provides detailed information regarding vehicle emissions generally and by vehicle model. The Commission is commencing this rulemaking proceeding because the emissions standards on the current AFV label will be obsolete starting in the 2004 vehicle model year, and the Ford Motor Company (''Ford'') has petitioned the Commission to revise the label in light of this. In this proceeding, the Commission also is conducting a review of this Rule pursuant to the Commission's regulatory review program. The notice includes a description of the procedures to be followed, an invitation to submit written comments, and questions and issues upon which the Commission particularly desires comments.

DATES: Written comments must be submitted on or before June 23, 2003.

ADDRESSES: Six paper copies of each written comment should be submitted to the Office of the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. To encourage prompt and efficient review and dissemination of the comments to the public, all comments also should be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.)

Alternatively, the Commission will accept papers and comments submitted to the following email address: *afv@ftc.gov,* provided the content of any papers or comments submitted by email is organized in sequentially numbered paragraphs. All comments and any electronic versions (*i.e.,* computer disks) should be identified as ''16 CFR Part 309 Comment—Alternative Fuels and Vehicles Rule. The Commission will make this notice and, to the extent possible, all papers and comments received in electronic form in response to this notice available to the public through the Internet at the following address: *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Robin Richardson, Attorney, (202) 326–2798 (email: *rrichardson@ftc.gov*), or Neil Blickman, Attorney, (202) 326–3038 (email: *nblickman@ftc.gov*), Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Part A—Background

This Notice of Proposed Rulemaking (''NPR'') is being published pursuant to the provisions of Part 1, Subpart C of the Commission's Rules of Practice, 16 CFR 1.21–1.26, and 5 U.S.C. 551 *et seq.* Specifically, this rulemaking proceeding is being conducted pursuant to section 553 of the Administrative Procedure Act (''APA''), 5 U.S.C. 553, as was the original proceeding promulgating the Rule.[1] Section 553(b)(3) of the APA provides the Commission with the option of publishing the substance of a proposed rule instead of specific proposed rule language. The Commission seeks comment on the substance of proposed amendments to the Rule. The Commission also seeks comment on whether other options not proposed herein would be more appropriate.

1. The Rule

The Energy Policy Act of 1992 (''EPA 92'' or the ''Act''),[2] establishes a comprehensive national energy policy to increase gradually and steadily U.S. energy security in cost-effective and environmentally beneficial ways. The Act seeks to reduce U.S. dependence on oil imports, encourage conservation and more efficient energy use, reduce the use of oil-based fuels in the motor vehicle sector, and provide new energy options. The Act provides for programs that encourage the development of alternative fuels and alternative fueled vehicles.

Section 406(a) of EPA 92 directed the Commission to establish uniform labeling requirements, to the greatest extent practicable, for alternative fuels and AFVs.[3] In accordance with the statutory directive, on May 19, 1995, the Commission published a Rule requiring disclosure of specific information on labels posted on fuel dispensers for non-liquid alternative fuels (*e.g.,* compressed natural gas, electricity, and hydrogen), effective August 21, 1995, and on labels on AFVs, effective November 20, 1995.[4]

EPA 92 did not specify what information should be displayed on these labels. Instead, it provided generally that the Commission's rule must require disclosure of ''appropriate,'' ''useful,'' and ''timely'' cost and benefit information on ''simple'' labels. The purpose of the labeling requirements is to enable consumers to make informed choices and comparisons among competing non-liquid alternative vehicle fuels and AFVs.

Section 309.20 of the Rule provides that before offering for consumer sale a new covered AFV, manufacturers must affix, on a visible surface of each such vehicle, a label consisting of three

[1] *See* 59 FR 24014 (May 9, 1994). These procedures include: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposals to amend the Rule; (3) obtaining a final recommendation from staff; and (4) announcing final Commission action in a notice published in the **Federal Register**.

[2] Pub. L. 102–486, 106 Stat. 2776 (1992).

[3] 42 U.S.C. 13232(a).

[4] 60 FR 26926. The Rule also requires that sellers maintain records substantiating product-specific disclosures they include on these labels.

parts.[5] Part one discloses objective information about the estimated cruising range and environmental impact of the particular AFV. Part two discloses and explains specific factors consumers should consider before buying an AFV.[6] Part three lists specific toll-free telephone numbers for consumers who want to call the federal government for more information about AFVs.[7] Section 309.20 of the Rule further states that no marks or information other than that specified by the Rule may appear on the label.

With respect to environmental impact, the labels must state whether the vehicle has met an EPA emission certification standard and, if so, what standard. If a vehicle has been certified, that fact must be noted with a mark in a box on the label and a caret must be inserted above the certification standard the vehicle meets. The graphic on the label depicts seven EPA emissions standards in increasing order of stringency.

2. EPA's Emissions Certification Program

For many years, EPA has promulgated emissions classification standards as part of its Federal Motor Vehicle Control Program, which establishes pollution limits for ''criteria air pollutants'' (*i.e.,* hydrocarbons, carbon monoxide, nitrogen oxides, and particulate matter). These pollutants are released as exhaust from an automobile's tailpipe. In addition, hydrocarbons in vapor form are released due to the evaporation of fuel and during refueling. The standards apply to new motor vehicles manufactured in specified model years. After manufacturers submit appropriate test reports and data, the EPA Administrator issues a ''certificate of conformity'' to those vehicle manufacturers demonstrating compliance with the applicable emissions standards.

Pursuant to its authority under the 1990 Clean Air Act Amendments,[8] EPA began issuing stricter emission standards for each model year as a way of reducing levels of the criteria air pollutants. One set of standards, the Tier 1 standards, was phased in beginning with the 1994 model year. The second set of standards, phased in beginning with the 1999 model year, establishes stricter standards as part of a new ''clean-fuel vehicles'' program.[9] To qualify as a clean-fuel vehicle, a vehicle must meet one of five increasingly stringent standards. The standards are denominated, in increasing order of stringency, TLEV (''Transitional Low Emission Vehicle''), LEV (''Low Emission Vehicle''), ULEV (''Ultra Low Emission Vehicle''), ILEV (''Inherently Low Emission Vehicle''), and ZEV (''Zero Emission Vehicle''). The Rule requires both sets of EPA emission standards to be disclosed because the Commission determined that information concerning EPA emission certification levels provides a simple way of comparing different AFVs and, therefore, is useful to consumers considering AFV acquisitions.[10] Since the FTC's Rule was promulgated, EPA has promulgated new tailpipe emission standards, called the ''Tier 2'' standards.[11] As a result, the EPA standards currently required to be disclosed on the Commission's AFV label will be obsolete starting in the 2004 vehicle model year.

3. Ford's Petition

Ford's petition concerns EPA's new more stringent federal tailpipe emission standards. These federal tailpipe emission standards, as well as new, more stringent California Low Emission Vehicle II (''LEV II'') standards discussed below, limit exhaust emissions of five pollutants: non-methane organic gases, carbon monoxide, nitrogen oxides, particulate matter, and formaldehyde.[12]

Tier 2 is a fleet averaging program, which is modeled after the California LEV II standards. Manufacturers can produce vehicles with emissions ranging from relatively dirty to zero, but the mix of vehicles a manufacturer sells each year must have average nitrogen oxide emissions below a specified value. The Tier 2 tailpipe emissions standards are structured into eleven certification levels of different stringency called ''certification bins.'' Vehicle manufacturers will have a choice of certifying particular vehicles to any of the eleven bins. However, the average nitrogen oxide emissions of the entire vehicle fleet sold by each manufacturer will have to meet an average nitrogen oxide standard of 0.07 grams per mile.

Additionally, Ford noted that in October 1999, California adopted more stringent state tailpipe emission standards, called the ''LEV II'' standards, which are effective starting in the 2004 vehicle model year. California did not adopt the same standards EPA established, nor did it adopt the same acronyms (bins) for its standards. California's LEV II standards are denominated, in increasing order of stringency, LEV, ULEV, SULEV (''Super Ultra Low Emission Vehicle''), PZEV (''Partial Zero Emission Vehicle''), and ZEV. California's LEV II standards affect passenger cars, light-duty trucks, and medium-duty vehicles. Generally, the LEV II standards extend passenger car emission standards to heavier sport utility vehicles and pick-up trucks, extend and tighten fleet average tailpipe emission standards during the period 2004–2010, significantly tighten nitrogen oxide and particulate matter standards for all vehicle emission categories, and further reduce evaporative emissions.

Ford, and other manufacturers, will be certifying their AFVs to the more stringent EPA Tier 2 emission standards in the 2004 model year. Ford is petitioning the Commission to amend the Commission's AFV label because it does not provide a means of conveying information about the new EPA Tier 2 standards. Ford, therefore, is requesting that the Commission amend the Rule to permit use of an AFV label that differs

[5] Section 309.1(f) of the Rule defines a covered vehicle as either of the following: (1) A dedicated or dual fueled passenger car (or passenger car derivative) capable of seating 12 passengers or less; or (2) a dedicated or dual fueled motor vehicle (other than a passenger car or passenger car derivative) with a gross vehicle weight rating less than 8,500 pounds which has a vehicle curb weight of less than 6,000 pounds and which has a basic vehicle frontal area of less than 45 square feet, which is: (i) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or (ii) designed primarily for transportation of persons and has a capacity of more than 12 persons. Further, section 309.1(t) of the Rule defines a new covered vehicle as a covered vehicle which has not been acquired by a consumer. The Rule also contains labeling requirements for used AFVs, but they are not at issue here because they do not require the disclosure of specific emissions information.

[6] The factors include information concerning fuel type, operating costs, performance/convenience, fuel availability, and energy security/renewability. As the proposed labels below indicate, the Commission proposes simplifying the descriptions of these factors to make them easier for consumers to read and comprehend.

[7] The federal government agencies referenced are the Department of Energy (''DOE'') and the National Highway Traffic Safety Administration (''NHTSA''). The Commission also proposes revising slightly part three of the label by listing the Commission's toll-free telephone number and website for consumers who wish to call the FTC for more information about AFVs.

[8] Pub. L. 101–549, 104 Stat. 2399 (1990).

[9] *See* 40 CFR 88 (1996).

[10] 60 FR 26926, 26946 (May 19, 1995).

[11] 65 FR 6698 (Feb. 10, 2000). These standards regulate emissions from cars and light-duty trucks, which include sport utility vehicles, pick-up trucks, and minivans.

[12] According to staff at EPA, the Tier 2 program is designed to reduce the emissions most responsible for the ozone and particulate matter impact from these vehicles—nitrogen oxides and non-methane organic gases consisting primarily of hydrocarbons and contributing to ambient volatile organic compounds. Hydrocarbons and nitrogen oxides are the major contributors to urban smog.

in two respects from the currently required AFV label, as follows:

(1) To convey accurate information to consumers nationwide regarding new covered AFVs, Ford requested that the Commission amend the Rule's AFV label by substituting the eleven Tier 2 certification bins for the EPA emission standards that currently appear on the AFV label. To convey accurate information to consumers in California, as well as the four other states that have adopted the California standards, Ford also requested that the Commission amend the Rule to permit inclusion of boxes and acronyms for California's LEV II emission standards on the Commission's AFV label. Ford further requested permission to add a check-box to the label with accompanying text that reads, ''This vehicle meets the California Air Resources Board LEV II emissions standard noted below.''

(2) Alternatively, Ford requested that the AFV label be amended to require disclosure of only the EPA Tier 2 emission standard, if any, to which the AFV has been certified, and permit disclosure on the same label of the California LEV II emission standard, if any, to which the AFV has been certified.

Ford asserted that granting its petition will provide useful information to consumers considering AFV acquisitions and will permit Ford to demonstrate to consumers the technological advances it has made in producing cleaner, lower-emitting vehicles. Without changes to the Commission's AFV label, Ford stated that it will not be possible to inform customers clearly of the true emissions performance of these cleaner vehicles, because the label would not reflect the correct emission standard. Ford also stated that it is important that a single AFV label be applied to all vehicles to avoid excessive cost and complexity. Thus, Ford requested permission to include California's LEV II emission standards on the AFV label. As a result of the adoption of the California standards by Maine, Massachusetts, New York, and Vermont, California certified vehicles will be required in five states, representing over 15% of the total U.S. sales, according to Ford. Therefore, Ford asserted that including California's standards on the label also would be helpful to consumers outside of California.

4. Discussion of the Rule's Emission Disclosure Requirements

In issuing the Rule, the Commission concluded that requiring disclosure of emission certification standards is appropriate and would be useful to consumers. The Commission noted further that incorporating environmental considerations into national energy policy was a key goal of EPA 92, and improving the environment was a principal purpose of that statute. EPA 92 gives special attention to the fact that the environmental performance of alternative fuels differs, and that those differences need to be explained to consumers.[13] Granting Ford's petition to include the federal Tier 2 and California LEV II standards on AFV labels may provide relevant comparative information regarding alternative fuels that will be helpful to consumers considering AFV acquisitions (*e.g.,* fleet operators as well as environmentally concerned consumers). Specifically, because an AFV is certified to a specific emission standard, disclosure of the certification level may continue to provide a useful way of comparing different AFVs, and evaluating comparative advertising and marketing claims regarding an AFV's environmental performance.

The Commission agrees that the current label should be amended in light of EPA's new Tier 2 standards. Accordingly, the Commission seeks comment on whether either of the two Rule amendments Ford proposed should be adopted by the Commission. The Commission recognizes, however, that including the federal Tier 2 and California LEV II standards on the AFV label may result in a label that is even more complex than the current label. The additional complexity may detract from a consumer's ability to evaluate the information presented on the label. Thus, the Commission also is seeking comment on additional proposed options for amending the AFV label. These options would consolidate the information now prescribed on a two-sided label onto one side and eliminate information that soon will become obsolete by (1) deleting specific emissions information altogether or (2) requiring only the disclosure of the emission certification standard that has been met.

Part B—Proposed Alternative Options

The Commission is seeking comment on four AFV labeling options.

1. *Option No. 1:* This option tracks Ford's first proposal. It modifies the AFV label by substituting EPA's Tier 2 emission standards for the EPA standards that currently are depicted on the label. The Tier 2 standards reflect the varying emissions levels and are divided into 11 categories or ''bins.'' These bins are depicted as a horizontal row of boxes and corresponding acronyms that is divided into 11 equal parts or ''bins.'' This option permits, and therefore includes, an additional, second row of boxes and acronyms that depict the California LEV II standards. If a vehicle has been certified to a California LEV II standard, this option would allow that fact to be noted with a mark in a box on the label, along with a caret inserted above the standard to which the vehicle has been certified. Because California did not adopt the same number of standards (''bins'') as EPA, and not all of the California standards have a bin equivalent, two different rows are necessary to present this information. The Commission has slightly modified Ford's proposal by adding a reference in part three of the label to EPA's new green vehicle guide website, and states: ''Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit *http://www.epa.gov/greenvehicle.*''[14]

The proposed label represents all of the applicable federal and state emissions standards that may be used to certify a vehicle through the 2010 model year period. However, the information provided may overwhelm the label's space limitations and may not be helpful to consumers because of its complexity, and the lack of contextual references explaining the rows of boxes. Also, the addition of state standards may make the label even more information dense.[15]

Including EPA's website address on the label may provide consumers a helpful reference to comparative emissions information. At its website, EPA provides a thorough explanation of emissions information in a more comprehensive manner than otherwise would be possible on the AFV label. Thus, the Commission believes it would be helpful to consumers to reference EPA's emissions resources on the label.

[13] 60 FR 26926, 26946.

[14] The Commission also proposes adding the EPA reference to the Rule's label for used AFVs.

[15] *See generally* Wesley A. Magat, W. Kip Viscusi, and Joel Huber, *Consumer Processing of Hazard Warning Information,* Journal of Risk and Uncertainty, 1:201–232, at 228 (1988) (''information overload results in less information retained by the consumer'').

Option No. 1

AFV Buyers Guide

Compare the Cruising Range and Emissions of this Vehicle with Other Alternative Fuel Vehicles (AFV) Before You Buy.

Manufacturer's Estimated Cruising Range

XX-XX

Miles on one tank or charge

Actual cruising range will vary with options, driving conditions, driving habits, and vehicle's condition.

Emissions

5 1/2"

☐ This vehicle has not been certified as meeting an EPA standard.
☐ This vehicle meets the EPA emissions standard noted below.
☐ This vehicle meets the California Air Resources Board (LEV II) emissions standard noted below.

E EPA C CARB

E

BIN 1	BIN 2	BIN 3	BIN 4	BIN 5	BIN 6	BIN 7	BIN 8	BIN 9	BIN 10	BIN 11

FEWER EMISSIONS **MORE EMISSIONS**

C

ZEV	PZEV	SULEV	ULEV	LEV

The overall environment impact of driving any vehicle includes many factors not currently measured by existing emissions standards.

Please read back for important information.

Back of Label

Before selecting an Alternative Fueled Vehicle consider:

☑ **FUEL TYPE:** Know which fuel(s) power this vehicle.

☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably.

☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.

☑ **FUEL AVAILABILITY:** Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.

☑ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.

5 1/2"

Additional Information

DEPARTMENT OF ENERGY (DOE)
For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, http://www.afdc.doe.gov.

ENVIRONMENTAL PROTECTION AGENCY (EPA)
Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit http://www.epa.gov/greenvehicle.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.
For more information call toll-free (877) FTC-HELP or visit www.ftc.gov.

7"

2. *Option No. 2:* This option tracks Ford's alternate proposal. It would require disclosure of the EPA Tier 2 emission standard, if any, to which the AFV has been certified, and permit disclosure on the same label of the California LEV II emission standard, if any, to which the AFV has been certified. For this option, the Commission also proposes providing a reference in part three of the label to EPA's green vehicle guide website. This option simplifies the emissions disclosure section of the label and allows manufacturers to indicate their compliance with the EPA Tier 2 and California LEV II emission standards. The label would not, however, indicate where the vehicle falls on the two ranges of emission standards and, thus, may not readily communicate that other options, in terms of emissions certifications, are available. Consumers could consult EPA's website for comparative vehicle information based on emission levels. However, the limited emissions information on the label may not provide sufficient information to help consumers make comparisons.

Option No. 2

AFV Buyers Guide

Compare the Cruising Range and Emissions of this Vehicle with Other Alternative Fuel Vehicles (AFV) Before You Buy.

Manufacturer's Estimated Cruising Range

XX-XX

Miles on one tank or charge

Actual cruising range will vary with options, driving conditions, driving habits, and vehicle's condition.

Emissions

5 1/2"

☐ This vehicle has not been certified as meeting an EPA standard.
☐ This vehicle meets the EPA emissions standard noted below.
☐ This vehicle meets the California Air Resources Board (LEV II) emissions standard noted below.

EPA - Tier 2 Bin 5
CARB - LEV

The overall environment impact of driving any vehicle includes many factors not currently measured by existing emissions standards.

Please read back for important information.

Back of Label

Before selecting an Alternative Fueled Vehicle consider:

☑ **FUEL TYPE:** Know which fuel(s) power this vehicle.

☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably.

☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.

☑ **FUEL AVAILABILITY:** Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.

☑ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.

5 1/2"

Additional Information

DEPARTMENT OF ENERGY (DOE)
For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, http://www.afdc.doe.gov.

ENVIRONMENTAL PROTECTION AGENCY (EPA)
Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit http://www.epa.gov/greenvehicle.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.
For more information call toll-free (877) FTC-HELP or visit www.ftc.gov.

7"

3. *Option No. 3:* This option deletes specific reference to EPA's emissions standards on the front of the AFV label, and instead directs interested consumers to EPA's green vehicle guide website where detailed information is provided. This website provides all of the necessary background information in a format more conducive to understanding and assessing comparative tailpipe emissions. It also includes references to all vehicles and is not limited to AFVs. Accordingly, the Commission requests comment on whether referring consumers to this website may provide a significantly more helpful basis for a consumer to assess relative costs and benefits in terms of purchasing an AFV than listing all the EPA emissions standards or disclosing which certification standard has been met.

This proposal is based on several considerations. First, the emissions information on the current label is based on emissions standards that change over time. Any label revisions made to reflect the new Tier 2 standards also will become obsolete in the future. Second, the emissions information on the current label already is complex. Revising the label to reflect the federal Tier 2 and California LEV II standards would add more complex and non-contextual information to the label, which may not be particularly helpful to consumers. Additionally, although the bins reflect all of EPA's Tier 2 emission standards, the overwhelming majority of AFVs ultimately may fall within only a limited number of bins. Thus, depicting bins that may never be referenced may not be helpful.

The Commission further proposes moving the information in parts two and three of the AFV label from the back to the front of the label. This information includes the specific factors consumers should consider before buying an AFV, as well as referrals to DOE, EPA, and NHTSA for more information about AFVs. This option would eliminate the need to include information on the back of the label. A one-sided label may be easier for consumer to use, and possibly less costly to produce, even if the label dimensions are increased to encompass information now on two sides.[16] A downside, however, may be that the front of the label includes so much information that it overwhelms consumers and does not help them make informed decisions.

[16] Currently the Rule specifies that the label must be 7 inches wide and 5½ inches long. One possibility would be to expand the label to 7½ inches wide and 7 inches long, or larger, so that the print size can be proportionately larger.

Option No. 3

AFV Buyers Guide

Compare the Cruising Range of this Vehicle with Other Alternative Fuel Vehicles (AFV) Before You Buy.

Manufacturer's Estimated Cruising Range

XX-XX

Miles on one tank or charge

Actual cruising range will vary with options, driving conditions, driving habits, and vehicle's condition.

7 1/2"

Before selecting an Alternative Fueled Vehicle consider:

☑ **FUEL TYPE:** Know which fuel(s) power this vehicle.

☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably.

☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.

☑ **FUEL AVAILABILITY:** Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.

☑ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.

Additional Information

DEPARTMENT OF ENERGY (DOE)
For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, http://www.afdc.doe.gov.

ENVIRONMENTAL PROTECTION AGENCY (EPA)
Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit http://www.epa.gov/greenvehicle.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.
For more information call toll-free (877) FTC-HELP or visit www.ftc.gov.

7"

4. *Option No. 4:* This option combines option number two and, in part, option number three. Specifically, the Commission proposes requiring disclosure of only the EPA Tier 2 emission standard, if any, to which the AFV has been certified, and permitting disclosure on the same label of the California LEV II emission standard, if any, to which the AFV has been certified. For this option, the Commission also proposes providing a reference in part three of the label to EPA's green vehicle guide website. In addition, the Commission proposes moving the information in parts two and three of the AFV label from the back to the front of the label.

Option No. 4

AFV Buyers Guide

Compare the Cruising Range and Emissions of this Vehicle with Other Alternative Fuel Vehicles (AFV) Before You Buy.

Manufacturer's Estimated Cruising Range

XX-XX

Miles on one tank or charge

Actual cruising range will vary with options, driving conditions, driving habits, and vehicle's condition.

Emissions

☐ This vehicle has not been certified as meeting an EPA standard.
☐ This vehicle meets the EPA emissions standard noted below.
☐ This vehicle meets the California Air Resources Board (LEV II) emissions standard noted below.

7 1/2"

EPA - Tier 2 Bin 5
CARB - LEV

Before selecting an Alternative Fueled Vehicle consider:

☑ **FUEL TYPE:** Know which fuel(s) power this vehicle.

☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably.

☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.

☑ **FUEL AVAILABILITY:** Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.

☑ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.

Additional Information

DEPARTMENT OF ENERGY (DOE)
For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, http://www.afdc.doe.gov.

ENVIRONMENTAL PROTECTION AGENCY (EPA)
Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit http://www.epa.gov/greenvehicle.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.
For more information call toll-free (877) FTC-HELP or visit www.ftc.gov.

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Part C—Regulatory Review

In accordance with the Commission's modified ten-year regulatory review schedule, the regulatory review of the Rule is being conducted during this rulemaking proceeding. Therefore, the Commission seeks information, as noted below, about the costs and benefits of the Rule and its regulatory and economic impact.

Part D—Preliminary Regulatory Analysis

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule only when it (1) estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined that the proposed amendments to the Rule will not have such effects on the national economy, on the cost of, or on covered businesses or consumers. The Commission, however, requests comment on the economic effects of the proposed amendments.

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–12, requires that the agency conduct an analysis of the anticipated economic impact of the proposed amendments on small businesses. The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

The Commission has tentatively concluded that the proposed Rule amendments will not affect a substantial

number of small entities because information the Commission currently possesses indicates that relatively few companies currently manufacture, convert, or sell AFVs. Of those that manufacture, convert, or sell AFVs, most are not ''small entities,'' as that term is defined either in section 601 of RFA, 5 U.S.C. 601(6), or applicable regulations of the Small Business Administration, 13 CFR Part 121. Accordingly, the proposed amendments would not appear to have a significant economic impact upon such small entities. Specifically, the proposed amendments to the AFV label to either substitute the new EPA Tier 2 emission standards for the EPA standards currently displayed on the Commission's AFV label, or eliminate altogether or reduce the number of emission standard disclosures, and add a reference on the label to EPA's green vehicle guide website should benefit both small and large businesses. The amendments also should not have a significant or disproportionate impact on the labeling costs of small AFV manufacturers.

Based on available information, therefore, the Commission certifies that amending the Rule as proposed will not have a significant economic impact on a substantial number of small businesses. To ensure that no significant economic impact is being overlooked, however, the Commission requests comments on this issue. The Commission also seeks comments on possible alternatives to the proposed amendments to accomplish the stated objectives. After reviewing any comments received, the Commission will determine whether a final regulatory flexibility analysis is appropriate.

Part E—Paperwork Reduction Act

The Rule contains various information collection requirements for which the Commission has obtained clearance under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* Office of Management and Budget (''OMB'') Control Number 3084–0094. As noted above, Section 309.20 of the Rule provides that before offering a new covered AFV for acquisition to consumers, manufacturers must affix on a visible surface of each such vehicle a new vehicle label consisting of three parts. Part one must disclose objective information about the estimated cruising range and environmental impact of the particular AFV. With respect to environmental impact, the labels must tell consumers whether or not the vehicle has met an EPA emission certification standard and, if so, what standard. If a vehicle has been certified, that fact must be noted with a mark in a box on the label, and a caret must be inserted above the standard the vehicle has been certified to meet. The graphic on the label depicts seven EPA emissions standards in increasing order of stringency.

The Commission has tentatively concluded that the proposed amendments would not increase and may decrease the paperwork burden associated with the aforementioned paperwork requirements. Consequently, there are no additional ''collection of information'' requirements included in the proposed amendments to submit to OMB for clearance under the Paperwork Reduction Act. The Commission's proposed amendments to modify the AFV label by either substituting the new EPA Tier 2 emission standards for the EPA standards currently displayed on the Commission's AFV label, or eliminating altogether or reducing the number of emission standard disclosures would not increase the Rule's paperwork burden. For example, substituting the EPA Tier 2 emission standards for the existing standards would not change the Rule's requirements, but merely would update the acronyms on the label to accurately depict the EPA emission standards currently in effect. Further, adding a specifically described reference on the label to EPA's green vehicle guide website would not increase the Rule's paperwork burden.[17]

Thus, the Commission has tentatively concluded that the proposed amendments would not increase the paperwork burden associated with compliance with the Rule. To ensure that no significant paperwork burden is being overlooked, however, the Commission requests comments on this issue.

Part F—Additional Information for Interested Persons

1. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

2. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Commission Rule 1.18(c)(1), 16 CFR 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period. They shall be placed on the public record if the communication is received later.

Part G—Invitation To Comment and Questions for Comment

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of proposed amendments to the Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In particular, copy test or focus group data about various label options would be appreciated. In addition to the issues raised above, the Commission solicits public comment on the costs and benefits to industry members and consumers of each of the proposals, as well as the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

The written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5 p.m. at the Federal Trade Commission, 600 Pennsylvania Ave., NW., Room 130, Washington, DC 20580, (202) 326–2222.

Questions

Proposed Rule Amendments

1. Should the Commission amend the Rule's AFV label in accordance with option number one by substituting EPA's new Tier 2 emission standards for the EPA standards that currently are depicted on the label, permitting manufacturers to disclose on the label the California LEV II emission standard, if any, to which the vehicle has been certified, and adding a reference in part three of the label to EPA's new green vehicle guide website? If so, why? If not, why not?

2. Should the Commission amend the Rule's AFV label in accordance with option number two by requiring disclosure of only the EPA Tier 2 emission standard, if any, to which the AFV has been certified, permitting

[17] The public disclosure of information originally supplied by the federal government to the recipient for the purpose of disclosure to the public is not included within the definition of ''collection of information'' in the Paperwork Reduction Act, 5 CFR 1320.3(c)(2).

disclosure on the same label of the California LEV II emission standard, if any, to which the AFV has been certified, and adding a reference in part three of the label to EPA's green vehicle guide website? If so, why? If not, why not?

3. Should the Commission amend the Rule's AFV label in accordance with option number three by deleting altogether specific reference to EPA's emissions standards on the front of the AFV label, directing consumers to EPA's green vehicle guide website, and moving the information in parts two and three of the AFV label from the back to the front of the label? If so, why? If not, why not? What dimensions should the Commission specify if the Commission adopts a one-sided label?

4. Should the Commission amend the Rule's AFV label in accordance with option number four by requiring disclosure of only the EPA Tier 2 emission standard, if any, to which the AFV has been certified, and permitting disclosure on the same label of the California LEV II emission standard, if any, to which the AFV has been certified, providing a reference in part three of the label to EPA's green vehicle guide website, and moving the information in parts two and three of the AFV label from the back to the front of the label? If so, why? If not, why not?

5. Are there any other options not proposed herein that the Commission should consider that would be more appropriate in terms of amending the Rule's AFV label in light of EPA's new Tier 2 emission standards and California's new LEV II standards?

6. Should the Commission amend the Rule to permit disclosure of a state (*e.g.,* California) emission standard to which a covered AFV has been certified?

7. Would a required disclosure in part one of the Commission's AFV label concerning EPA emission certification standards continue to be useful to consumers considering AFV acquisitions?

8. Part two of the Commission's AFV label requires disclosure of specific factors consumers should consider before purchasing an AFV. The factors relate to fuel type, operating costs, performance/convenience, fuel availability, and energy security/renewability. Do these factors continue to be relevant and useful to consumers considering buying an AFV?

9. Should the Commission also modify the Rule's label for used AFVs by adding a reference on the label to EPA's green vehicle guide website?

10. The Commission's Rule-required labels currently reference DOE for more information about AFVs. Should the Commission add a reference on the AFV labels to DOE's alternative fuels data center website, *http://www.afdc.doe.gov,* so that interested persons can access relevant brochures?

Regulatory Review

11. Is there a continuing need for the Rule as currently promulgated?

(a) What benefits has the Rule provided to purchasers of the non-liquid alternative fuels and the AFVs affected by the Rule?

(b) Has the Rule imposed costs on purchasers?

12. What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers? How would these changes affect the costs the Rule imposes on firms who comply with the Rule? How would these changes affect the benefits to purchasers?

13. What significant burdens or costs, including costs of compliance, has the Rule imposed on firms who comply with the Rule? Has the Rule provided benefits to such firms? If so, what benefits?

14. What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms that comply with the Rule? How would these changes affect the benefits provided by the Rule?

15. Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

16. Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

List of Subjects in 16 CFR Part 309

Alternative fuel, Alternative fueled vehicle, Energy conservation, Labeling, Reporting and recordkeeping, Trade practices.

Authority: 42 U.S.C. 13232(a).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–11391 Filed 5–7–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

April 28, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed rule; Notice of white paper and request for comments.

SUMMARY: On July 31, 2002, the Commission issued a Notice of Proposed Rulemaking (NOPR) in the above-captioned docket, proposing to amend its regulations to remedy undue discrimination through open access transmission service and standard electricity market design. *See* 67 FR 55452 (Aug. 29, 2002). The Commission has distributed a white paper to set forth its assessment of how the electric industry should move forward to achieve long-term benefits for electricity customers, and how it intends to change the rule proposed in the above docket on July 31, 2002, to meet the concerns that have been raised in rulemaking comments. The Commission welcomes public comment on this document.

DATES: Comments are welcome at any time.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Alice Fernandez (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8284.

David Mead (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8028.

Mark Hegerle (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8287.

David Withnell (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8421.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page *(http://www.ferc.gov)* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Washington, DC 20426.

Today the Commission is publishing a White Paper to set forth its assessment of how the electric utility industry should move forward to achieve long-term benefits for electricity customers, and how it intends to change the rule proposed in the above docket on July 31, 2002, to meet the concerns that have been raised in rulemaking comments.

The White Paper is being placed in the record of this rulemaking docket. It will also be available on the Commission's Web site at *http://www.ferc.gov/Electric/RTO/mrkt-strct-comments/discussion_paper.htm*.

The Commission welcomes public comment on this document. All comments will be 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. Comments 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.

The Commission also intends to begin holding regional technical conferences in the near future, to discuss with states and market participants in each region reasonable timetables for addressing wholesale market design issues discussed in the White Paper and ways to tailor the Commission's final rule to benefit customers within the region. We will issue notices of the conferences shortly.

By direction of the Commission.

Magalie R. Salas,

Secretary.

White Paper; Wholesale Power Market Platform

The Federal Energy Regulatory Commission's core mission under the Federal Power Act is to achieve wholesale electricity markets that produce just and reasonable prices and work for customers. The Commission's July 2002 proposal to harmonize wholesale power markets sought to advance this core mission in the context of the new realities of regional electricity markets.[1]

The industry has been evolving toward a market-based approach for well over a decade and active long-term wholesale bilateral markets exist in all regions of the country. However, short-term wholesale markets with transparent prices and market structures that will reliably produce just and reasonable prices are not likely to develop without strong Commission action. Wholesale electricity markets do not automatically structure themselves with fair behavioral rules, provide a level playing field for market participants, effectively monitor themselves, check the influence of market power, mitigate prices that are unlawful, or fix themselves when broken. These are the responsibilities of the Commission under current law, and our proposal was made with these responsibilities in mind.

Our proposal was informed by the experiences of this country and other countries in electric market design, including the effects of supply shortages, demand that does not respond to high prices, lack of price transparency in the marketplace, and the importance of market monitoring and market power mitigation. Based on the extensive comments we have received during the past nine months, we are issuing this White Paper to set forth our assessment of how best to move forward in the electric industry for the long-term benefit of electricity customers, and how we intend to change our proposed rule to meet the concerns that have been raised.

Our goals continue to be reliable, reasonably priced electric service for all customers; sufficient electric infrastructure; transparent markets with fair rules for all market participants; stability and regulatory certainty for customers, the electric power industry, and investors; technological innovation; and efficient use of the nation's resources. Further, providing regulatory certainty for the industry and investors in order to build needed infrastructure is a critical need facing the energy industry and requires Commission action.

Under the Final Rule, we intend to focus on the formation of regional transmission organizations (RTOs) and on ensuring that all RTOs and independent system operators (ISOs) have good wholesale market rules in place.[2] We will eliminate the proposed requirement that public utilities create or join an Independent Transmission Provider. Instead, in light of the fact that almost all public utilities already have joined, or committed to join, an RTO or ISO, the Final Rule will require public utilities to join an RTO or ISO.[3] Further, we intend to adopt a Final Rule that allows for phased-in implementation and sequencing tailored to each region and that allows modifications to benefit customers within each region. In addition, if for a specific RTO or ISO it can be demonstrated to the Commission that the costs of implementing any feature of the market platform outweigh its benefits, the Commission will not require implementation of the feature for that particular RTO or ISO.[4]

For the basic wholesale market platform, we intend to build upon the existing rules adopted in Order No. 2000 for RTOs by adding features that we have learned are necessary for effective wholesale power markets.[5] For example, Order No. 2000 did not include market power mitigation measures and does not prevent flawed market designs. Wholesale electric markets will not be able to deliver full customer benefits in the future without the oversight and transparency that regional independent transmission organizations can provide. Healthy and well-functioning wholesale power markets are central to the national economy, and we believe that regional, independent operation of the transmission system, with proven market rules in place, is the critical platform for the future success of electric markets. Divestiture is not required to achieve independent operation of the transmission system. Companies may remain vertically integrated under an RTO or ISO.

In the years since Congress enacted the Energy Policy Act of 1992, competition among power plants for wholesale customers' business has largely replaced traditional cost-of-service regulation of wholesale power sales. The Department of Energy found

[1] Notice of Proposed Rulemaking, Docket No. RM01–12–000, issued July 31, 2002.

[2] For the purposes of the Final Rule, all of the characteristics and functions for RTOs would apply to Independent System Operators (ISOs), except for scope and regional configuration.

[3] The requirements of the Final Rule will not apply to Commission-jurisdictional electric power cooperatives that serve only retail load.

[4] We intend to commence technical conferences in each region and to work with states and market participants to develop reasonable timetables for moving forward.

[5] Details of the wholesale power market platform and a comparison of them to the requirements of Order No. 2000 are included in Appendix A.

that relying more on markets has saved customers $13 billion per year over traditional regulation. It has stimulated innovation in generation and transmission technologies. It has freed customers from being forced to pay for the ''stranded costs'' of unwise investments. This competitive market framework came about as a result of national legislation and a series of Commission initiatives in both the wholesale gas and electric industries. In particular, these actions were intended to provide all wholesale power sellers with equal access to the transmission grid. Equal, nondiscriminatory access is a necessary prerequisite for fair competition among sellers, and, together with regional operation of the grid, gives wholesale buyers access to a much wider range of supply choices.

The transition to restructured markets has not been smooth or uniform. In regions with an effective wholesale market platform, an ISO or RTO provides effective market monitoring and has clear market rules designed to protect customers. Some markets, however, clearly have not been immune from market design flaws. Experiences in California have shown the consequences of poorly designed markets and inadequate generation, transmission and demand response. Moreover, they demonstrate the need for before-the-fact market power mitigation and ongoing market monitoring. Some areas also have experienced ''seams'' problems where differences in design between regions create artificial barriers to trade which raise costs, limit customer supply choices, and create opportunities for exploitation of differences between markets.

In other areas of the country, where markets do not have independent or regional grid operation, the lack of price transparency in the marketplace can mask problems and transmission operators can use their ability to control the transmission system to favor their own power sales. New competitors may be blocked or delayed because the transmission operator can favor its affiliated suppliers both in interconnecting to the grid and in allocating the costs of interconnection. The result of these problems is higher customer costs, making independence a critical element for protecting native load. Dealing with these issues and concerns on a case-by-case basis takes significant time and effort for both the Commission and market participants to resolve.

In the proposed rule, the Commission identified the building blocks for a healthy wholesale market to address the problems we have experienced in both competitive and non-competitive markets. In moving forward on a Final Rule, we believe it is critical to retain certain fundamental building blocks for healthy electric markets, and we agree with commenters that regional economic differences and regional timing constraints must be recognized. Below we identify market issues that lend themselves to regional solutions without compromising the integrity of a solid market platform.

The Commission is aware that the success of our RTO-based initiative is more likely in a region where the bulk of the transmission grid is in the hands of jurisdictional public utilities. But in the Pacific Northwest, roughly 80 percent of the grid assets are controlled by the Bonneville Power Administration, which is not a public utility under the Federal Power Act. Bonneville's participation in RTO West is essential for RTO West to succeed. Thus, we encourage Bonneville's continued voluntary participation in RTO West. We are also aware that Bonneville will continue to participate only if RTO West has the flexibility to meet the unique needs of the Pacific Northwest. We clarify what may be obvious. Any decision of Bonneville to meet its obligations and operational responsibilities with respect to such matters as irrigation, flood control, treaties, environmental rules and the like is solely Bonneville's to make and is not jurisdictional to the Commission. While the Commission has limited jurisdiction over Bonneville's rates under the Pacific Northwest Electric Power Planning and Conservation Act, the contracts between Bonneville and its customers do not require Commission review or approval. We have heard the concerns expressed about the merits of locational pricing and a day ahead market in a region dominated by interdependent hydroelectric resources. With respect to these concerns, our commitment is to work with interested parties, including state commissions, to find solutions that are appropriate to the unique needs of the Pacific Northwest.

The Commission will consider all comments received on this White Paper, as well as any pending electricity legislation being considered in the U.S. Congress, prior to issuing a Final Rule.

Comments on the Proposed Rule

A number of concerns have been raised about various aspects of the proposed rule. We have received approximately 1,000 sets of formal comments on our proposed rule. The most extensive concerns involved the following issues. We state these concerns and our responses below:

- The Commission proposed to assert jurisdiction over transmission used to provide retail service to native load customers.

Pursuant to Order No. 888, the Commission currently asserts jurisdiction over wholesale transmission service and unbundled retail transmission service by public utilities. In the Final Rule, with respect to bundled retail service, we will continue our existing practice for RTOs and ISOs of distinguishing between the non-price terms and conditions of transmission service and the rates for transmission service. As discussed in Appendix A, the non-price terms and conditions of the RTO or ISO tariff will apply equally to all users, including those taking service to meet their obligation to serve bundled retail customers. However, the Commission will not assert jurisdiction over the transmission rate component of bundled retail service, thereby avoiding unintended issues raised by a new assertion of jurisdiction.

- Specific features of the proposed rule, particularly the resource adequacy requirement and the regional transmission planning requirement, infringe on state jurisdiction.

The Commission clarifies that nothing in the Final Rule will change state authority over these matters. We will not include a minimum level of resource adequacy. The RTO or ISO may implement a resource adequacy program only where a state (or states) asks it to do so, or where a state does not act. The Final Rule will direct RTOs and ISOs to develop a periodic regional transmission plan for submission to relevant state and local siting authorities and to assist the states in whatever manner they desire, including evaluating the impact of new generation, transmission, energy efficiency, and demand response on regional reliability and resource adequacy.

- The transition process to the new proposed transmission service would not provide sufficient protection for existing customers.

As with our earlier restructuring efforts in the natural gas and electric power industries, we want to ensure that existing customers retain their existing transmission rights and retain rights for future load growth. While all customers that pay a basic access charge can schedule transmission service, it is important that customers be able to protect themselves from congestion costs through Firm Transmission Rights (FTRs). The Final Rule will eliminate any requirement that FTRs be auctioned. We will, instead, look to

regional state committees to determine how such rights should be allocated to current customers based on current uses of the grid. Varying approaches to FTR allocation need not create ''seams'' with neighboring regions.

• The proposed rule was too prescriptive in substance and in implementation timetable, and did not sufficiently accommodate regional differences.

As discussed above, we intend to adopt a Final Rule that allows for phased-in implementation and sequencing tailored to each region and that allows modifications to benefit customers within each region. To the extent that it can be demonstrated to the Commission that the costs of implementing any feature of the Final Rule outweigh its benefits, the Commission will not require the RTO or ISO to implement that feature. Before issuing a Final Rule, we intend to convene technical conferences with state commissioners and market participants in each region to discuss which aspects of the platform (if any) have not already been addressed and the timeline, sequence and budget for moving forward.[6] Also, as discussed in Appendix A, each RTO or ISO would provide a forum for state representatives to participate in the RTO's or ISO's decisionmaking process. That forum is referred to as the regional state committee.

• The proposed rule did not provide sufficient clarity on cost recovery for investment in new transmission facilities.

Each RTO or ISO will be required to have a clear transmission cost recovery policy outlined in its tariff. We will look to the RTO or ISO and the regional state committee to determine the appropriate regional approach for allocating the costs of new transmission. Regions may differ on the extent to which they want to rely on participant funded expansions; this difference need not create ''seams'' with neighboring regions. Because this issue is such an important one in stimulating appropriate investment by both existing and new transmission companies, we will allow an RTO or ISO to implement such policies once there is a regional planning process through which an independent entity performs all necessary facilities studies and determines cost responsibility for the required transmission upgrades.[7]

Wholesale Market Platform

The Commission believes that certain elements need to be in place for well-functioning wholesale markets.

Regional Independent Grid Operation

Order No. 2000 required that all RTOs meet four minimum characteristics: independence, scope and regional configuration, operational authority, and short-term reliability. The Final Rule will reaffirm the need for these characteristics. In particular, the lack of independence continues to plague electricity markets because it provides an incentive for those who own generation and operate transmission facilities to operate the transmission system in ways that exclude competing generation suppliers and can allow the exercise of market power. This conflict of interest cannot be remedied through oversight and enforcement. Rather, structural separation of transmission operation from other wholesale market activities is required to eliminate the ability for such manipulation.

Regional operation is critical for both reliability and efficiency because power flows freely throughout regional grids. Order No. 2000 said ''the scope and configuration of the regions in which the RTOs are to operate will significantly affect how well they will be able to achieve the necessary regulatory, reliability, operational and competitive benefits.'' However, in the Final Rule we will allow flexibility on scope and configuration for ISOs. RTOs and ISOs are developing methods of interregional coordination that allow separate control, but a single market from the customer's perspective. Therefore, in the Final Rule we will not require ISOs to meet the scope and regional configuration requirement. However, all must actively pursue interregional coordination between RTOs and ISOs, including the elimination of the payment of multiple access fees for transactions that cross ISO and RTO borders.

Order No. 2000 required that the RTO be the sole provider of transmission service and sole administrator of its own open access tariff. Included in this is the requirement that the RTO have the sole authority for the evaluation and approval of all requests for transmission service including requests for new interconnections. The Final Rule will reaffirm these requirements.

Regional Transmission Planning Process

Regional planning of the transmission grid is essential to ensure the most effective use of the interconnected grid facilities. The RTO or ISO is in a unique position to discern regional needs and address factors inhibiting investment in transmission and generation through conducting a region-wide planning process. As required in Order No. 2000, the Final Rule will require the RTO or ISO to produce technical assessments of the regional grid and support the state siting authorities or multi-state entities by performing necessary studies. The purpose is to assist the states and market participants by giving an independent assessment of the transmission facilities needed by the region to reliably and economically serve load located within the region. How the RTO or ISO, state commissions, transmission owners, and other market participants participate in the process will be decided regionally. By administering the regional tariff, RTOs and ISOs also provide the critical link to a cost recovery mechanism for regional transmission expansions. The Final Rule would require RTOs and ISOs to have a regional planning process in place as soon as practicable.

Fair Cost Allocation for Existing and New Transmission

The costs associated with the existing grid, other than those directly assigned, will continue to be recovered through rates paid by customers. To avoid having customers pay multiple, cumulative charges for transmission service across multiple utility grids in a region, the rate paid by a customer should permit that customer to have access to the entire region at a single rate. As discussed in Appendix A, regional state committees may agree on the form of access charge that will be filed by the RTO or ISO under section 205 of the Federal Power Act. That means the committee will decide whether to propose to move to a uniform rate for transmission service throughout the region (known as postage stamp rates), or whether to propose to maintain single, but different access charges depending on where power is taken off the grid (known as license plate rates).[8]

[6] To avoid the reliability and operational problems that result when some parts of the grid do not participate in RTO or ISO functions, we strongly encourage regional decision-making on RTO or ISO implementation through regional state committees, stakeholder committees, and other authorities in the region.

[7] In Appendix A, we explain that allowing participant funding on the basis of having an independent entity perform transmission planning and related cost allocation is a transitional approach that could be used in anticipation of the RTO or ISO assuming operational control of the regional transmission grid within one year.

[8] Under license plate rates, the single access charge is usually based on each transmission owners' service area.

To gain access to a wider range of supply choices, RTOs and ISOs should eliminate the payment of multiple access fees across RTO and ISO borders. Rate mechanisms to minimize cost shifts should be used. If there is a notable imbalance between imports to and exports from an RTO or ISO, the net exporting RTO or ISO may seek to recover some of its transmission costs through an export rate.

As discussed above, costs of new transmission expansions will be recovered in accordance with the regional pricing policy, which may be informed by the appropriate regional state committee. As discussed in Appendix A, the regional pricing policy will be filed with the Commission by the RTO or ISO.

Market Monitoring and Market Power Mitigation

These are relatively undeveloped features of Order No. 2000, which did not have a market power mitigation component. For customers to benefit from wholesale power markets, it is critical that market prices fairly reflect the conditions of supply and demand rather than the exercise of market power. Each RTO or ISO would have an independent market monitor either for the individual RTO or ISO or for a larger region.

The market power mitigation measures must protect against the exercise of market power without suppressing prices below the level necessary to attract needed investment in new infrastructure in the region. At a minimum, the RTO's or ISO's tariff should include rules limiting bidding flexibility where there is localized market power. The RTO's or ISO's tariff must also include clear market rules designed to prevent market manipulation strategies, including the types of anti-gaming tariff provisions in the proposed rule.

The types of mitigation tools and the triggers and consequences of mitigation should be tailored to the needs of each region. For example, energy-limited resources, such as hydroelectric generators, may need to have bidding mitigation protocols and thresholds that are different from thermal generators. However, mitigation tools which vary by region across market seams have the potential to create enforcement problems and undesirable behavioral incentives. For this reason, the Commission will look closely at mitigation proposals, not only for their suitability for the RTO's or ISO's regional markets, but for their compatibility with neighboring RTOs and ISOs.

Spot Markets To Meet Customers' Real-Time Energy Needs

While we expect that the vast majority of energy bought and sold will continue to be under negotiated long-term contracts between customers and suppliers, the nature of electricity requires the availability of a spot market for the last-minute sales or purchases needed to ensure system reliability. This balancing function is currently performed by the transmission provider. Under the Final Rule, the RTO or ISO must use a real-time market for energy to resolve imbalances. A transparent spot market not only helps keep the system reliable and lowers costs but also provides important price and other information to all market participants on an equal and open basis. It also gives the public a timely way to assess the functioning of the market. These markets will also facilitate customer response to prices as well as ease the introduction of some renewable and other innovative supply technologies.[9] The RTO or ISO in each region will develop the detailed market rules that will be included in its Commission-filed tariff. An RTO or ISO must also introduce a day-ahead market and a market for various ancillary services when the market is ready for those steps. Unlike Order No. 2000, which allowed power exchanges without a check for security constraints, any RTO or ISO day-ahead market must be designed to work reliably with the congestion management system.[10]

Transparency and Efficiency in Congestion Management

Regions should develop an approach to manage congestion that protects against manipulation, uses the grid efficiently, and promotes use of the lowest cost generation. Efficient market behavior depends heavily on assigning cost responsibility to those who cause the costs and the benefits to those who reduce costs. Today, transmission providers resolve congestion through a system that causes unnecessarily expensive generation redispatch. These added costs are hidden but are real and are paid by customers today. Order No. 2000 required RTOs to have transparent market mechanisms with efficient price signals in place to manage transmission congestion within one year of initial operation. We would continue that general approach for both RTOs and ISOs. We clarify that this rule will not override decisions we have already made in individual RTO or ISO cases regarding congestion management.[11]

Firm Transmission Rights

RTOs and ISOs that use locational pricing to manage congestion would be required to make Firm Transmission Rights (FTRs) available to customers.[12] FTRs protect customers from the costs of congestion. Under the Wholesale Power Market Platform, customers in RTOs that use locational pricing along with network transmission service would have firm physical transmission service, and customers with FTRs would be protected from congestion costs.

We will not require auctions of these rights. FTRs allow customers to schedule service according to the paths specified in their rights, with no risk of congestion charges. There also would be no risk of curtailment, absent a force majeure event such as the loss of a transmission line. By providing protection from congestion costs, FTRs also allow market participants to enter into contracts with a locked-in price if desired. Thus, FTRs allow for maximum utilization of valuable scarce grid capacity and therefore lower costs to customers.

In the Final Rule, for RTOs or ISOs that have not already addressed this issue, these rights would be allocated according to existing contracts and existing service arrangements in order to hold customers harmless. To the extent transmission rights have already been approved by the Commission in RTO or ISO orders we would not override these decisions in the Final Rule.

Resource Adequacy Approaches

Order No. 2000 did not include a regional view of resource adequacy. We have learned that if one state has inadequate resources, it can create severe problems for the larger region. It is difficult for the Commission to assure just and reasonable wholesale market prices if there are insufficient resources to meet demand. Each region with an RTO or ISO will determine how it will ensure that the region has sufficient

[9] State action is required for retail customers to have demand response options. Where states permit end users to participate directly in wholesale markets, demand response programs could be administered through the RTO or ISO tariff. The Commission strongly advocates demand response to limit supplier market power, enhance reliability and resource adequacy, and limit price volatility.

[10] The failure to check for security constraints created perverse incentives for participants in California to create congestion.

[11] As discussed in Appendix A, we are also including options that will minimize cost shifts.

[12] The discussion applies to RTOs and ISOs that have embraced locational pricing. As noted in Appendix A, there are ongoing discussions in the Western Interconnection regarding common elements of market design. We will not prejudge the results of those ongoing discussions.

resources to meet customers' needs. The approach to and level of resource adequacy will be decided by the states in the region drawing from a mix of generation, transmission, energy efficiency, and demand response. It is important to have a consistent approach throughout the region, which should be developed by the regional state committee. States may decide to ensure resource adequacy through state imposed requirements on utilities serving load within the region. Other states may choose to have RTOs or ISOs operate capacity markets. In any case, the choice on the approach is made by the states within the region.

Other Issues on Which Commenters Seek Clarification

- RTO and ISO Governance—We will include overarching principles of independent governance in the Final Rule, but will decide governance issues on a case-by-case basis. The Final Rule will not override governance already approved in earlier RTO orders.
- RTO Decisions—We confirm that the decisions made in prior RTO orders in which we noted an overlap with the Standard Market Design rulemaking will not be overturned in the Final Rule.
- Liability—A standard tariff provision limiting liability for transmission providers will be included in the Final Rule.
- Cyber Security—We will adopt the North American Electric Reliability Council (NERC) standards for cyber security.
- Reciprocity—We propose no change to the Order No. 888 reciprocity requirements and Order No. 2000 provisions affecting non-jurisdictional entities in the U.S., Canada, and Mexico. We believe non-jurisdictional entities will benefit from RTO formation and the development of standardized wholesale market rules. We encourage such non-jurisdictional entities to voluntarily participate in RTOs and ISOs as full and equal members.
- Independent Transmission Company—We propose no change in our prior decisions on the functions that should be performed by an RTO and those that may be performed by an independent transmission company that operates within the RTO's territory.[13]
- Standards—We are encouraged that NERC, the North American Energy Standards Board, and RTOs and ISOs have reached agreements on a process through which they will work together in the development of reliability and market standards. Market standards developed through this process could be included in RTO and ISO tariffs to facilitate compatible and seamless rules across the interconnected power grid.

Appendix A Comparison of the Proposed Wholesale Market Platform with the RTO Requirements of Order No. 2000

This appendix compares the current requirements for RTOs of Order No. 2000 with the requirements of the Wholesale Market Platform that would apply to both RTOs and ISOs. The Wholesale Market Platform is designed to build on these existing requirements. ISOs would have to satisfy all of the same requirements as RTOs except with respect to Scope and Regional Configuration.

This appendix identifies the changes and additions to the Characteristics and Functions specified in Order No. 2000 that would result from the Wholesale Market Platform. All other Characteristics and Functions requirements would remain the same. The Final Rule for the Wholesale Market Platform would also clarify when incremental pricing of new transmission facilities (participant funding) could be used. Finally, the Final Rule would impose several new market-related requirements on RTOs and ISOs.

Order No. 2000 was a voluntary program. Since that time, almost every public utility has joined or has committed to join an RTO or ISO. Therefore, the Final Rule will require that all public utilities join an RTO or ISO.[1]

As discussed in the White Paper, if for a specific RTO or ISO it can be demonstrated to the Commission that the costs of implementing any feature of the market platform outweigh its benefits, the Commission will not require implementation of the feature for that particular RTO or ISO.

Throughout this appendix we discuss the role of the states in RTO and ISO decisions. The Wholesale Market Platform would require each RTO and ISO to provide a forum for state representatives in the decision-making process, *i.e.*, a regional state committee. This requirement is discussed in more detail below.

Finally, as discussed in the White Paper, the Commission does not intend to overturn decisions that have already been made in individual RTO cases. Decisions made in prior RTO orders in which we noted an overlap with Standard Market Design will not be overturned in the Final Rule. The Commission also does not intend to change our prior decisions regarding the functions that should be performed by an RTO and those that may be performed by an Independent Transmission Company that operates within the RTO's territory.

Characteristics and Functions

The four Characteristics required of an RTO are: Independence; Scope and Regional Configuration; Operational Authority; and Short-term Reliability.

The eight required Functions are: Tariff Administration and Design; Congestion Management; Parallel Path Flows; Ancillary Services[2]; OASIS; Market Monitoring; Planning and Expansion; and Interregional Coordination.

Characteristics

1. Independence

Order No. 2000. RTOs must be independent of market participants. As set out in Order No. 2000, by market participant, the Commission means any entity that, either directly or through an affiliate, sells or brokers electric energy, or provides transmission or ancillary services to the RTO unless the Commission finds that the entity does not have economic or commercial interests that would be affected by the RTO's actions or decisions.

Wholesale Market Platform. RTOs and ISOs would be required to meet all of the Order No. 2000 principles for Independence. In addition, the Final Rule will add to the Order No. 2000 requirements overarching principles on how to structure independent governance. The Commission will decide RTO governance matters on a case-by-case basis. Further, these overarching principles will not change governance decisions that have been approved in earlier RTO orders.

2. Scope and Regional Configuration

Order No. 2000. The RTO must serve an appropriate region. The region must be of sufficient scope and configuration to permit the RTO to maintain reliability, effectively perform its required functions, and support efficient and non-discriminatory power markets.

Wholesale Market Platform. RTOs would be required to satisfy this Characteristic. However, new and existing ISOs would not be required to satisfy this Characteristic. But, ISOs must actively pursue interregional coordination to minimize the creation of

[13] *See* TRANSLink Transmission Company, LLC, *et al.*, 99 FERC ¶ 61,106 (2002).

[1] The requirements of the Final Rule will not apply to Commission-jurisdictional electric power cooperatives that serve only retail load.

[2] This includes operation of a real-time spot market for energy imbalances.

seams that act as barriers to trade among regions.

3. Operational Authority

Order No. 2000. The RTO must have operational authority for all transmission facilities under its control. The RTO must also be the security coordinator for the facilities that it controls.

Wholesale Market Platform. RTOs and ISOs would be required to meet this Characteristic.

4. Short-Term Reliability

Order No. 2000. The RTO must have exclusive authority for maintaining the short-term reliability of the grid that it operates. It must have exclusive authority for receiving, confirming and implementing all interchange schedules. The RTO must have the right to order redispatch of any generator connected to transmission facilities it operates if necessary for the reliable operation of these facilities. When the RTO operates transmission facilities owned by other entities, it must have authority to approve or disapprove all requests for scheduled outages of transmission facilities to ensure that the outages can be accommodated within established reliability standards.

Wholesale Market Platform. RTOs and ISOs would be required to satisfy this Characteristic.

Functions

Under Order No. 2000, the RTO must perform the following Functions when it commences operations, unless otherwise noted.

1. Tariff Administration and Design

Order No. 2000. The RTO must administer its own transmission tariff and employ a transmission pricing system that will promote efficient use and expansion of transmission and generation facilities. The RTO must be the only provider of transmission service over the facilities under its control, and must be the sole administrator of its own Commission-approved open access transmission tariff. It must have the sole authority to receive, evaluate, and approve or deny all requests for transmission service. The RTO must have the authority to review and approve requests for new interconnections. Customers under the RTO tariff must not be charged multiple access fees for the recovery of capital costs for transmission service over facilities that the RTO controls.

Wholesale Market Platform. The Final Rule would retain these features and also would clarify the jurisdictional consequences that result when a public utility that owns, controls, or operates transmission facilities in interstate commerce joins an RTO or ISO. In the context of RTOs and ISOs, the RTO or ISO becomes the sole provider of transmission services for the facilities it controls, and transmission owning members of the RTO or ISO become wholesale customers of the RTO or ISO.

To accommodate both the realities of a regionally operated transmission system and the jurisdiction concerns raised by the states, the Commission will distinguish non-price terms and conditions of transmission service from rates for transmission service. As discussed below, we will assert jurisdiction over the non-price terms and conditions of transmission used by wholesale transmission customers to serve bundled retail customers, but we will not assert jurisdiction over the transmission rate component of bundled retail sales of electric energy.[3] Moreover, in setting the wholesale rate for transmission, the Commission will rely upon the transmission rate set by the states for bundled retail service.

Non-price terms and conditions of transmission service include matters such as reserving capacity and scheduling service, and it is critical in the context of RTOs and ISOs that such non-price terms and conditions apply to all customers on a not unduly discriminatory basis, with appropriate protection of native load customers. Consistent with our existing policy for transmission service used to serve unbundled retail customers (*i.e.,* those in retail choice states), the Final Rule would allow state regulatory authorities to request waivers of any non-price terms and conditions of the RTO or ISO tariff that are not compatible with bundled retail service needs. We note that Commission-filed open access tariffs have successfully accommodated service to unbundled retail customers since Order No. 888 went into effect in 1996 and that ISO and RTO tariffs have successfully accommodated service to unbundled as well as bundled retail customers.

We clarify that Commission jurisdiction over non-price terms and conditions of transmission used by wholesale transmission customers to serve bundled retail customers does not affect state authority over retail choice decisions, transmission siting, or local issues associated with transmission or distribution (*e.g.,* maintenance, tree trimming, downed lines, etc.).

The price that a transmission owner pays to the RTO or ISO becomes its cost for the transmission used to deliver the energy sold at retail. Consistent with existing Commission policy, transmission owners would be free to seek a rate from the RTO or ISO for the transmission purchased to deliver energy to bundled retail customers that is equal to the transmission component of the bundled retail rates set by the state commission. Under this approach, the rate set for transmission in interstate commerce to be re-sold as part of bundled retail service would be the same rate set by the state for the transmission component of bundled retail sales. This arrangement would be accomplished under a wholesale contract between the RTO or ISO and the transmission owner. Service agreements reflecting such proposed rates would be filed with the Commission and must be consistent with the Federal Power Act (FPA).

The Final Rule would also clarify that the RTO or ISO may use license plate or postage stamp rates for designing the access charges for the region. Each regional state committee may determine which approach the RTO or ISO should file with the Commission under section 205 of the FPA. If the regional state committee is unable to reach a decision on the methodology that should be used, the RTO or ISO would file its own proposal pursuant to section 205 of the FPA.

RTOs and ISOs should eliminate export and import fees where there is not a notable imbalance between imports to and exports from a region. Other rate measures could be used to prevent cost shifts among the regions.[4] This could include adjusting the revenue requirement for the importing region to include a portion of the revenue requirement of the exporting region. However, where there is a notable imbalance between imports to and exports from a region, the RTO or ISO may seek to recover some of its transmission costs through an export fee.

2. Congestion Management

Order No. 2000. The RTO must ensure the development and operation of market mechanisms to manage transmission congestion. The market mechanisms must accommodate broad

[3] Bundled retail sales of electric energy are sales of electric energy to retail customers where generation, transmission, distribution, and other services necessary to supply electric energy to such customers are sold as a single delivered service by a single seller and retail supplier choice is not permitted by state authorities.

[4] For example, a portion of the transmission cost of service of the exporting region could be recovered through the access charge of the importing region. Such a measure would reduce the transmission costs that would be collected from customers in the exporting region.

participation by all market participants, and must provide all transmission customers with efficient price signals that show the consequences of their transmission usage decisions. The RTO must either operate such markets itself or ensure that the task is performed by another entity that is not affiliated with any market participant. The RTO must satisfy the market mechanism requirement no later than one year after it commences initial operation. However, it must have in place at the time of initial operation an effective protocol for managing congestion.

Wholesale Market Platform. The Final Rule would retain the requirements that the RTO or ISO have an effective protocol for managing congestion at the time of initial operation and a market mechanism for congestion management after one year of operation.

The Final Rule would modify the requirement for market mechanisms to manage congestion. The RTO or ISO would be required to operate such markets itself. However, two or more RTOs or ISOs may apply to the Commission to do coordinated congestion management over a multi-RTO or ISO area as long as this function is carried out by an independent entity approved by the Commission.

Additionally, the Final Rule would add general principles that a good market congestion management system must satisfy. The congestion management system must: (1) Protect against market manipulation, such as experienced in the California markets; (2) promote the efficient use of the transmission grid; (3) promote the use of the lowest cost generation as intended under traditional economic generation dispatch; (4) assign cost responsibility to those that cause congestion costs and assign the benefits to those that reduce congestion costs; (5) reduce involuntary transmission service curtailments, *e.g.,* Transmission Line Loading Relief; and (6) be compatible with congestion management systems used by other RTOs and ISOs in the electrical interconnection, to avoid creating barriers to trade among RTOs and ISOs.[5]

The Commission has already tasked the Seams Steering Group-Western Interconnection (SSG–WI) with developing consistent and compatible market elements for the Western Interconnection by the fourth quarter of 2003. The congestion management system being developed by SSG–WI should satisfy these general principles.

The Commission's preferred approach to congestion management is through locational pricing. However, other methods may be proposed. The RTO or ISO would need to demonstrate to the Commission how the proposed congestion management system satisfies these general principles.

If an RTO or ISO uses locational pricing, it must ensure that each existing firm customer (including transmission owners with a service obligation for native load) has the opportunity to obtain FTRs[6] equivalent to that customer's existing firm rights.[7] We will ensure not only that existing customers retain their existing rights, but also that they have the ability to obtain rights for future load growth. Customers who paid for transmission for load growth can retain the FTRs for that capacity. The FTRs that are offered by the RTO or ISO must, in the aggregate, be consistent with the physical limitations of the transmission system.[8] If transmission rights or their allocation have already been approved by the Commission in RTO or ISO orders, we would not override these decisions in the Final Rule.

There would be no requirement to auction these FTRs either initially or after a transition period. The RTO or ISO tariff must also offer customers the ability to obtain additional FTRs for load growth. Customers paying the access charge would have the right to receive the additional FTRs associated with transmission upgrades that are included in the regional transmission plan. Entities that pay for the construction of transmission upgrades through participant funding will receive the FTRs that result from the transmission upgrades. Once the initial allocation of FTRs is completed, the RTO or ISO must operate a secondary market for holders of FTRs to voluntarily sell their FTRs to others.

The market mechanism for congestion management must be in place within one year after initial operation, unless the Commission approves a different timetable. As noted previously, the Commission will be flexible both as to timing and implementation based on regional differences and needs.

3. Parallel Path Flow

Order No. 2000. The RTO must develop and implement procedures to address parallel path flow issues within its region and with other regions. It will have three years to implement measures to address parallel path flows between regions.

Wholesale Market Platform. RTOs and ISOs will be required to perform this Function.

4. Ancillary Services

Order No. 2000. The RTO must serve as a provider of last resort of all ancillary services (including energy imbalance service) required by Order No. 888 and subsequent orders. The services must be included in the RTO administered tariff so that transmission customers will have access to one-stop shopping for transmission service. All market participants must have the option of self-supplying or acquiring ancillary services from third parties. The RTO must have the authority to decide the minimum required amounts of each ancillary service and, if necessary, the locations at which these services must be provided. All ancillary service providers must be subject to direct or indirect operational control by the RTO. The RTO must promote the development of competitive markets for ancillary services whenever feasible. To provide energy imbalance service, the RTO must ensure that its transmission customers have access to a real-time balancing market. The RTO must either develop and operate this market itself or ensure that this task is performed by another entity that is not affiliated with any market participant.

Wholesale Market Platform. The Final Rule would require RTOs and ISOs to perform this Function. In addition, the Final Rule would require the RTO or ISO itself to operate a security constrained real-time market for balancing.[9] The RTO or ISO would not be permitted to use a separate power exchange to perform this function. The RTO or ISO must also operate a day-ahead market for energy and a market

[5] For purposes of this discussion, the electrical intereconnections are the Eastern Interconnection and the Western Interconnection.

[6] In the proposed rule, we coined the term ''Congestion Revenue Rights,'' or ''CRRs,'' as a standard term to describe the tradable, financial rights that would take the place of the current ''physical'' rights to firm transmission service. We chose this term to accurately describe what the holder had a right to receive—congestion revenues associated with the held CRRs' specified receipt and delivery points and MW quantity. These rights mirror those of FTRs used in most power markets. Reaction to our replacing ''FTR'' with ''CRR'' was less than enthusiastic; many saw no need for a new term unless a CRR differs from an FTR. As there is no real difference, we will now use the term ''FTR,'' or ''Firm Transmission Right,''.

[7] A similar transition requirement would apply to a congestion management system not based on locational pricing.

[8] Existing rights to service will be preserved. If necessary to meet these requirements, the RTO or ISO will create counterflow FTRs to make the aggregate set of FTRs physically feasible. If this results in a revenue shortfall, it could be recovered through an uplift charge.

[9] The spot market(s) operated by the RTO or ISO are intended only to supplement long-term supply arrangements.

for various ancillary services unless it is demonstrated that the costs exceed the benefits of such markets.

The spot market(s) operated by the RTO or ISO should facilitate price transparency (*i.e.,* for these spot markets the RTO or ISO should be required to provide on a timely basis, information about the availability and market price of sales of electric energy at wholesale in interstate commerce and transmission of electric energy in interstate commerce to the Commission, state commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public.)

Load-serving entities must also be able to schedule transmission for generation owned by or contracted for by that load-serving entity to meet a service obligation to customers or an existing wholesale obligation. Buyers, including intermittent resources, may procure power through these spot market(s) to meet their short-term energy needs. Sellers, including intermittent resources, may offer power for sale through the spot market(s).

The spot market(s) operated by the RTO or ISO must facilitate the ability of demand to respond to prices. The RTO or ISO must work with state authorities to facilitate any demand response programs operated under state retail tariffs. The RTO or ISO must also work with states that permit end users to directly access the wholesale market to facilitate state required demand response programs or to include appropriate demand response programs in the RTO's or ISO's tariff.

Where a locational pricing system is used for congestion management, the prices in these spot market(s) must be location specific for sellers (nodal). The RTO or ISO may use zonal or nodal prices for buyers. Under a zonal system, the prices paid by load would be aggregated for the zone (*e.g.*, a utility service territory).[10] A locational pricing system can use either cost-based bids or market-based bids to determine the locational prices.[11]

The RTO may charge for transmission losses within the region based on average or marginal losses.

5. OASIS and Total Transmission Capability (TTC) and Available Transmission Capability (ATC)

Order No. 2000. The RTO must be the single OASIS site administrator for all transmission facilities under its control and independently calculate TTC and ATC.

Wholesale Market Platform. RTOs and ISOs would be required to perform this Function.

6. Market Monitoring

Order No. 2000. The RTO must provide for objective monitoring of the markets it operates to identify design flaws, market power abuses, and opportunities for efficiency improvements, and must propose appropriate actions. Reports on these issues must be filed with the Commission and affected regulatory authorities. The Commission believes the information collected will be data that the RTO will collect or have access to in the normal course of business.

Wholesale Market Platform. The Final Rule would retain these features but would change the name and scope of this Function to Market Monitoring and Market Power Mitigation. The Final Rule would both expand and further define the role of market monitoring in the RTO or ISO. It would also expand this function to require the RTO or ISO and its market monitor to file market power mitigation measures that are needed for the market(s) operated by the RTO or ISO. Finally, the Final Rule would require that the RTO or ISO tariff include clear and enforceable rules to define and police market manipulation and gaming strategies.

The Final Rule would require that each RTO or ISO have an independent market monitor either for the individual RTO or ISO or for a larger region. The RTO or ISO tariff must contain appropriate market power mitigation measures to address market power problems in the spot markets. These mitigation measures must work together with measures on resource adequacy to ensure that the measures do not suppress prices below the level necessary to attract needed investment in infrastructure in the region.

The RTO or ISO tariff must also include a clear set of rules governing market participant conduct with the consequences for violations clearly spelled out. At a minimum these would include rules on: (1) Physical withholding of supplies; (2) economic withholding of supplies; (3) reporting on availability of units; (4) factual accuracy of information submitted to the RTO or ISO; (5) the obligation of market participants to provide information to the market monitor; (6) cooperation of market participants in investigations or audits conducted by the market monitor; and (7) the requirement that all bids that designate specific resources must be physically feasible.

The Final Rule would identify the reporting process that would be used if the market monitor thinks the markets are not resulting in just and reasonable prices or providing appropriate incentives for investment in needed infrastructure. This would include notification of the Commission, the regional state committee, and other appropriate state regulatory authorities of the nature of the problem and recommended solutions.

The Final Rule would also specify the periodic reports that the market monitor must prepare. The market monitor will provide annual reports on the state of its markets to the Commission, the regional state committee, and other appropriate state regulatory authorities. These reports will incorporate market metrics to provide a basis for measuring the performance of these markets across RTOs and ISOs, and to compare the performance of the market in each RTO or ISO over time. Metrics will also be developed to provide standard performance information on a monthly basis.

7. Planning and Expansion

Order No. 2000. The RTO must be responsible for planning, and for directing or arranging, necessary transmission expansions, additions, and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities. As part of this function, an RTO must encourage market-motivated operating and investment actions for preventing and relieving congestion. The RTO's planning and expansion process must accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities. The RTO planning and expansion process must be coordinated with programs of existing Regional Transmission Groups where appropriate. If the RTO is unable to satisfy this requirement when it commences operation, it must file with the Commission a plan with specified milestones that will ensure that it meets this requirement no later than three years after initial operation.

Wholesale Market Platform. The Final Rule would retain these features and also would modify this Function to

[10] This approach is in operation in the New York Independent System Operator, Inc. Under that system, generators *see* location specific prices. Load sees an aggregate price for each zone. Each zone is based on the service territory of an individual transmission owner.

[11] When PJM Interconnection, L.L.C. first started using locational pricing it did so using cost-based bids. As a transitional measure, regions may wish to take a similar initial approach to start locational pricing.

provide that the RTO or ISO must satisfy this requirement as soon as practicable but no later than when it begins operation, rather than after three years of initial operation. The Final Rule would not change the decisions in prior RTO orders regarding the role that an Independent Transmission Company (ITC) could have in the regional planning process.[12]

The regional transmission plan must include all transmission facility expansions in the region. Thus, the RTO or ISO can assess the combined effect on loop flows and reliability of all existing and planned facilities, including transmission facility expansions for which the costs are not necessarily to be borne by all customers. However, we clarify that transmission owners and others may propose to build transmission enhancements. The RTO or ISO will assess the impact of these proposals in the regional transmission plan. In addition, the RTO or ISO may assess the need for transmission enhancements in view of opportunities for energy efficiency, demand response, and new generation technologies, consistent with the policy direction of the regional state committee on these issues.

The RTO or ISO must also be responsible for transmission planning, and for directing or arranging, necessary transmission expansions, additions, and upgrades that will enable it to reliably and economically serve the needs of all customers in the region, including historical and native load customers and their projected load growth. The RTO or ISO would include transmission upgrades in the regional plan that are necessary to maintain or improve reliability or to reduce congestion and improve access to lower cost supplies (economic enhancements).

Economic enhancements would be included in the regional transmission plan with the costs recovered through the license plate or postage stamp access charges, if it is prudent to do so from the perspective of native load in the region. For example, these projects could include transmission upgrades that: (1) Would resolve significant and persistent congestion within the region; (2) due to their size and scope, are unlikely to be undertaken as participant funded transmission upgrades; or (3) show positive benefits to the region using a cost benefit analysis that compares the cost to load within the region and the benefits to load within the region.

We will permit regional flexibility in determining the types of economic enhancements that would be recovered through the access charges.[13] Some RTO or ISO regions may choose an expansive definition of the types of economic enhancements that benefit customers within the region. Other RTO or ISO regions may choose to rely more on participant funding.

The RTO or ISO tariff would have a clear plan that states the non-discriminatory criteria that would be used for determining the reliability and economic enhancements that are needed for customers within the region. Each regional state committee may determine the criteria for these economic enhancements. If the regional state committee reaches a decision on the criteria that would be used, the RTO or ISO would file these criteria in a filing pursuant to section 205 of the FPA. If the regional state committee is unable to reach a decision, the RTO or ISO would file its own proposal pursuant to section 205 of the FPA.

The Final Rule would not require that the RTO or ISO use a Request for Proposal (RFP) process for transmission upgrades.

8. Interregional Coordination

Order No. 2000. The RTO must ensure the integration of reliability practices within an interconnection and market interface practices among regions.

Wholesale Market Platform. RTOs and ISOs would perform this Function. In addition, the Final Rule would require that RTOs and ISOs within an electrical interconnection coordinate to resolve seams issues. Additionally, as discussed above, RTOs and ISOs should coordinate to eliminate export fees where there is no significant trade imbalance between the regions.

Transmission Pricing

In addition to the above Characteristics and Functions of an RTO, Order No. 2000 also addressed transmission pricing reforms by RTOs.

Order No. 2000. RTOs may file for a variety of innovative rate reforms, including performance-based, returns on equity, non-traditional methods of determining depreciation schedules for new transmission investments, and incremental pricing for new transmission investments (which has since become known as participant funding). Some of these pricing reforms will be available only through January 1, 2005.

Wholesale Market Platform. The Final Rule would provide that both RTOs and ISOs would be eligible for the rate reforms identified in Order No. 2000.

The Final Rule would provide further clarification on when incremental pricing for new transmission facilities (participant funding) could be used. The cost of transmission projects that are determined through the regional planning process to be necessary to reliably and economically serve load in the region will be recovered through the access charge that is assessed to load in the region. As stated above, regions would have flexibility in determining the types of economic enhancements that would be recovered through the access charge. Some RTO or ISO regions may choose an expansive definition of the types of economic enhancements that benefit customers within the region. Other RTO or ISO regions may choose to rely more on participant funding.

These rate provisions would be revised to permit an optional transitional process that could be used for participant funding. For a transitional period, not to exceed a year, participant funding may be used for transmission upgrades for generator interconnection as soon as an independent entity has been approved by the Commission and the affected states. Using the regional criteria, the independent entity would make decisions on which transmission upgrades should be participant funded and which ones should not. These decisions would be made through a regional planning process conducted by an independent entity in which the independent entity is also responsible for conducting all necessary facility studies.[14] However, this transitional process is explicitly predicated on the assumption that this will be the first step towards the RTO or ISO satisfying the requirements of § 35.34 of the Commission's regulations.

Additional Requirements of the Wholesale Market Platform

In addition to the above changes to the existing requirements for RTOs, the Wholesale Market Platform would require the following:

1. Role of the States

Order No. 2000. Order No. 2000 recognizes that states have an important role in RTO formation and governance,

[12] *See* TRANSLink Transmission Company, LLC, *et al.*, 99 FERC ¶ 61,106 (2002).

[13] As discussed below, the choice made by the region will affect the cost recovery for transmission upgrades. If a transmission upgrade is determined to be needed to reliably and economically serve load in the region, the costs will be recovered through the license plate or postage stamp access charges used by the region.

[14] *E.g.*, if ESBI were selected by the SeTrans Sponsors to be their proposed ISA and it received the necessary regulatory approvals, ESBI could serve this function for SeTrans RTO on an interim basis.

and regional interests forming an RTO are required to consult with the states about the appropriate role for states and about the organizational form of the RTO. Although there were calls for the Commission to establish some form of regional regulation in Order No. 2000, the Commission decided, given the diversity of regional state interests and state laws, as well as differences in the organizational forms that RTOs may adopt, to decline to reach generic conclusions about states' roles. The Commission invited states to participate collaboratively with the FERC in fostering RTO formation.

Wholesale Market Platform. The Final Rule would retain the requirement for an important role for states in RTO or ISO formation. In addition, each RTO or ISO would be required to provide a forum for the participation of state representatives in its decision making process. The structure and functions of these groups will be determined by the states within the region. Each regional state committee will also decide how it will reach decisions, *e.g.*, unanimous support or simple majority. State commissions working with existing RTOs and ISOs have developed procedures that provide examples that could be used in other regions. In the Midwest, state commissions have proposed the establishment of a flexible regional organization, a ''Midwest Multi-State Committee,'' that would provide coordinated action on matters that are subject to state jurisdiction as well as issues that relate to wholesale power markets and interstate transmission. In the mid-Atlantic region, state commissions have a memorandum of understanding with the RTO. Other procedures could also be used.

An RTO or ISO may propose to recover as part of its annual budget, the cost of reimbursing state officials' reasonable expenses incurred by serving on the regional state committee.

Each regional state committee would have the primary responsibility for determining the regional proposals for cost responsibility and the transition process listed below. The RTO or ISO will provide the regional state committee with technical assistance. If the regional state committee reaches a decision on the methodology that would be used, the RTO or ISO would file this methodology pursuant to section 205 of the FPA. If the regional state committee is unable to reach a decision, the RTO or ISO would file its own proposal pursuant to section 205 of the FPA.

- Whether, and to what extent, participant funding would be used within the region for transmission enhancements. This would include whether participant funding would be used on a transitional basis before the RTO or ISO assumes operational control of the transmission facilities.
- Whether license plate or postage stamp rates will be used for the access charge paid by load in the region.
- Where an RTO or ISO uses locational pricing, whether the region will allocate FTRs directly to customers or whether FTRs will be auctioned and the revenues from those auctions (Auction Revenue Rights or ARRs) allocated directly to customers.
- The transition process that will be used in the region to ensure that each existing firm customer receives FTRs or ARRs, based on the regional choice, equivalent to the customer's existing firm rights. This includes whether any revenue shortfalls would be recovered through an uplift charge that applies to all customers in the region or over a narrower class of customers, *e.g.*, only to customers in certain zones within the region.

Each regional state committee would determine the extent to which states within the region need to coordinate or have a consistent approach for certain planning issues that can affect cost responsibility among transmission owners and other load serving entities within the region. The RTO or ISO will provide the regional state committee with technical assistance. These include:

- Whether transmission upgrades for remote resources will be included in the regional transmission planning process.
- The role of transmission owners in proposing transmission upgrades.
- The role of generation, transmission, energy efficiency, and demand response in resource adequacy.

Each regional state committee will also be responsible for determining the resource adequacy approach that will be used across the entire region.

2. Resource Adequacy

Order No. 2000. Order No. 2000 has no provision for generation or demand response resource adequacy.

Wholesale Market Platform. Having sufficient available resources (generation, transmission, energy efficiency, demand response) is central to ensuring that wholesale power prices are just and reasonable and that service is reliable. The Final Rule will not require a uniform approach to resource adequacy. Rather, each regional state committee will be asked to determine the approach for resource adequacy across the entire region. The region may choose to use resource adequacy measures that are enforced by state regulation of utilities, enforced through the RTO or ISO tariff, *e.g.*, a capacity market, or other measures. The Final Rule will not set a minimum reserve margin.

The resource adequacy measures adopted by the region must work together with the region's market power mitigation measures to ensure that there are appropriate incentives to invest in sufficient infrastructure to maintain reliable and reasonably priced service to customers in the region.

3. Liability

The Final Rule would include standardized tariff provisions that limit the liability of RTOs and ISOs and transmission owners that belong to RTOs and ISOs. The tariff would provide that they would not be liable for any damages arising out of ordinary negligence. In instances of gross negligence, the RTO or ISO or the transmission owners that belong to RTOs or ISOs would only be liable for direct damages, and not for consequential or indirect damages. The same protections would also apply to generators when they are implementing the directives of the RTO or ISO. Courts will determine whether an action is negligent or grossly negligent.

4. Cyber Security

The Commission will adopt the North American Electric Reliability Council (NERC) standards on cyber security.

[FR Doc. 03–11357 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA–176P]

RIN 1117–AA47

Sale by Federal Departments or Agencies of Chemicals Which Could Be Used in the Illicit Manufacture of Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: DEA is proposing to conform its regulations to provisions of the National Defense Authorization Act. This Act provides that a Federal department or agency may not sell from its stocks any chemical which could be used in the manufacture of a controlled substance unless the Administrator of DEA certifies in writing that there is no

reasonable cause to believe that such a sale would result in the illegal manufacture of a controlled substance. This rulemaking codifies current practice established pursuant to statutory authority by which Federal agencies provide DEA with the opportunity to ensure that the sale of chemicals by them will not result in the illegal manufacture of controlled substances.

DATES: Written comments must be submitted on or before July 7, 2003.

ADDRESSES: Comments should be submitted to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7297.

SUPPLEMENTARY INFORMATION:

What Does the National Defense Authorization Act Require Federal Agencies To Do Before They May Sell Certain Chemicals?

Section 520 of the National Defense Authorization Act (Pub. L. 104–201) amended the Controlled Substances Act (CSA) to prohibit a Federal department or agency from selling from its stocks any chemical which, as determined by the Administrator of DEA, could be used in the manufacture of a controlled substance. However, the CSA as amended permits sales of such chemicals if the Administrator of DEA certifies in writing to the head of the selling Federal department or agency that there is no reasonable cause to believe that the sale of the chemical would result in the illegal manufacture of a controlled substance (21 U.S.C. 890).

Why Is DEA Taking This Action?

Since enactment of the National Defense Authorization Act in July 1996, DEA has worked with Federal departments and agencies to ensure compliance. Now, DEA plans to codify in its regulations the current practice that has been established pursuant to this statutory authority and the experience that DEA has gained from implementing these provisions.

How Does This Regulation Impact Federal Departments or Agencies?

This rule simply requires that the Federal department or agency notify DEA of the names of prospective bidders and end-users prior to the sale of chemicals which could be used in the manufacture of controlled substances. This notification will allow DEA to identify whether there is reasonable cause to believe that the sale of a specific chemical to a specific bidder or end-user would result in the illegal manufacture of a controlled substance. DEA will work with Federal departments and agencies to determine which chemicals could be used in the illicit manufacture of a controlled substance. To date, DEA has been contacted by only one Federal department or agency conducting sales of chemicals falling under the provisions of the Act, the Department of Defense (DOD). DEA has received the names of approximately fifty bidders and end-users from DOD and found, in every case, that there was no reasonable cause to believe that the sale of the specific chemical to the specific bidder and end-user would result in the illegal manufacture of a controlled substance. Therefore, DEA has certified each bidder and end-user whose name has been submitted by DOD to DEA.

What Chemicals Are Affected By These Implementing Regulations?

These implementing regulations affect any chemical which DEA determines could be used in the illicit manufacture of a controlled substance. Chemicals that can be used in the manufacture of a controlled substance include, but are not limited to, all List I and List II chemicals as provided in 21 CFR 1310.02. Further, any chemicals mentioned in the DEA ''Special Surveillance List of Chemicals, Products, Materials and Equipment Used in the Clandestine Production of Controlled Substances or Listed Chemicals'' published, and updated from time to time, in the **Federal Register** (64 FR 25910, May 13, 1999; corrected at 64 FR 50541, Sept. 17, 1999) are affected by these regulations. Finally, any chemical which is neither a listed chemical nor is listed in the special surveillance list but which could be used in the illicit manufacture of a controlled substance is affected by these implementing regulations. Such chemicals could include, but are not limited to, those chemicals used in the direct illegal manufacture of a controlled substance, those chemicals used as cutting agents, and those chemicals used to process the controlled substance into a dosage form. DEA strongly recommends that any Federal department or agency considering the sale of any chemical from its stocks contact DEA to determine whether such chemical could be used in the illicit manufacture of a controlled substance as far in advance of the sale of such chemical as possible.

What Do These Implementing Regulations Require?

DEA is proposing that a Federal department or agency notify the Administrator of DEA in writing at least 15 calendar days in advance of a proposed sale of chemicals covered by the Act. However, DEA strongly encourages Federal departments or agencies to notify it further in advance if possible.

By this rule, DEA is proposing that the written notification be submitted on official agency letterhead to the Drug Enforcement Administration, Office of Diversion Control, Domestic Chemical Control Unit (ODID) Washington, DC 20537 and include: (1) The name and amount of the chemical to be sold; (2) the name and address of the prospective bidder(s); (3) the name and address of the potential end-user(s), in cases where a sale is being brokered; (4) point(s) of contact for the prospective bidder and end-user; and (5) the end use of the chemical.

Within 15 calendar days from the date the written notification is received, DEA will respond in writing to the Federal department or agency certifying that there is, or is not, reasonable cause to believe that the sale of the specific chemical to the specific bidder and end-user would result in the illegal manufacture of a controlled substance. The certification that there is no reasonable cause to believe that the sale of the specific chemical to the specific bidder and end-user would result in the illegal manufacture of a controlled substance will apply to future sales to the same prospective bidder and end-user for the same chemical for one calendar year unless DEA notifies the agency to the contrary in writing.

What Factors Will DEA Consider in Certifying a Bidder or End-User?

In determining whether there is reasonable cause to believe that the sale of a specific chemical to a specific bidder or end-user would result in the illegal manufacture of a controlled substance, the Administrator will consider the following factors: (1) The prospective bidder's and end-user's past experience in the maintenance of effective controls against diversion of particular chemicals into other than legitimate medical, scientific, and industrial channels; (2) the prospective bidder's and end-user's compliance with applicable state and local law; (3) the prior conviction record of the prospective bidder and end-user relating to controlled substances or to chemicals

controlled under Federal or state laws; and (4) such other factors as may be relevant to and consistent with the public health and safety.

What Recourse Is Available to a Bidder or End-user if DEA Refuses To Certify a Prospective Bidder or End-User or Withdraws an Existing Certification?

If the Administrator determines there is reasonable cause to believe the sale of a specific chemical to a specific bidder or end-user would result in the illegal manufacture of a controlled substance and refuses to certify a prospective bidder or end-user, DEA will notify both the Federal department or agency and the prospective bidder and end-user in writing. The written notice to the prospective bidder and end-user will contain a statement of the legal and factual basis for certifying that there is reasonable cause to believe the sale of the specific chemical to that specific person would result in the illegal manufacture of a controlled substance. The prospective bidder and end-user may, within thirty calendar days of notification, submit written comments or objections to the Administrator, providing reasons and supporting documentation to contest the decision. The Administrator will take the written comments or objections under consideration and will either (1) provide a written statement that affirms the original decision is final and that provides reasons why the written comments or objections are overruled or are not considered; or (2) confirm the written response and certify the transaction, thereby reversing the original decision.

If the Administrator determines that there is reasonable cause to believe that an existing certification must be withdrawn, DEA will notify both the Federal department or agency and the specific bidder and end-user in writing. The written notice to the specific bidder and end-user will contain a statement of the legal and factual basis for certifying that there is reasonable cause to believe the certification must be withdrawn. The bidder and end-user may, within thirty calendar days of notification, submit written comments or objections to the Administrator, providing reasons and supporting documentation to contest the decision. The Administrator will take the written comments or objections under consideration and will either (1) provide a written statement that affirms the original decision is final and that provides reasons why the written comments or objections are overruled or are not considered; or (2) confirm the written response and reinstate a certification, thereby reversing the original decision.

Regulatory Certifications

Regulatory Flexibility Act

The Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The rule only affects Federal departments or agencies which plan to sell from their stocks chemicals which could be used in the manufacture of a controlled substance. The rule provides DEA with advance notice of the sale and the opportunity to prevent sales of chemicals which could result in the illicit manufacture of controlled substances.

Executive Order 12866

The Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866, section 1(b). DEA has determined that this is not a significant rulemaking action. Therefore, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of 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 section 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 million 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 21 CFR Part 1310

Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR Part 1310 is proposed to be amended as follows:

PART 1310—[AMENDED]

1. The authority citation for Part 1310 is proposed to be revised to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 890.

2. Part 1310 is proposed to be amended by adding §1310.21 to read as follows:

§ 1310.21 Sale by Federal departments or agencies of chemicals which could be used to manufacture controlled substances.

(a) A Federal department or agency may not sell from the stocks of the department or agency any chemical which, as determined by the Administrator of the Drug Enforcement Administration, could be used in the manufacture of a controlled substance, unless the Administrator certifies in writing to the head of the department or agency that there is no reasonable cause to believe that the sale of the specific chemical to a specific person would result in the illegal manufacture of a controlled substance. For purposes of this requirement, reasonable cause to believe means that the Administration has knowledge of facts which would cause a reasonable person to reasonably conclude that a chemical would be diverted to the illegal manufacture of a controlled substance.

(b) A Federal department or agency must request certification by submitting a written request to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: Domestic Chemical Control Unit (ODID). A request for certification may be transmitted directly to the Drug Enforcement Administration, Domestic Chemical Control Unit through electronic facsimile media. A request for certification must be submitted no later than 15 calendar days before the proposed sale is to take place. In order to facilitate the sale of chemicals from

Federal departments' or agencies' stocks, Federal departments or agencies may wish to submit requests as far in advance of the 15 calendar days as possible. The written notification of the proposed sale must include:

(1) The name and amount of the chemical to be sold;

(2) The name and address of the prospective bidder;

(3) The name and address of the prospective end-user, in cases where a sale is being brokered;

(4) Point(s) of contact for the prospective bidder and, where appropriate, prospective end-user; and

(5) The end use of the chemical.

(c) Within 15 calendar days of receipt of a request for certification, the Administrator will certify in writing to the head of the Federal department or agency that there is, or is not, reasonable cause to believe that the sale of the specific chemical to the specific bidder and end-user would result in the illegal manufacture of a controlled substance. In making this determination, the following factors must be considered:

(1) Past experience of the prospective bidder or end-user in the maintenance of effective controls against diversion of listed chemicals into other than legitimate medical, scientific, and industrial channels;

(2) Compliance of the prospective bidder or end-user with applicable state and local law;

(3) Prior conviction record of the prospective bidder or end-user relating to listed chemicals or controlled substances under Federal or state laws; and

(4) Such other factors as may be relevant to and consistent with the public health and safety.

(d) If the Administrator certifies to the head of a Federal department or agency that there is no reasonable cause to believe that the sale of a specific chemical to a prospective bidder and end-user will result in the illegal manufacture of a controlled substance, that certification will be effective for one year from the date of issuance with respect to further sales of the same chemical to the same prospective bidder and end-user, unless the Administrator notifies the head of the Federal department or agency in writing that the certification is withdrawn. If the certification is withdrawn, DEA will also provide written notice to the bidder and end-user, which will contain a statement of the legal and factual basis for this determination.

(e) If the Administrator determines there is reasonable cause to believe the sale of the specific chemical to a specific bidder and end-user would result in the illegal manufacture of a controlled substance, DEA will provide written notice to the head of a Federal department or agency refusing to certify the proposed sale under the authority of 21 U.S.C. 890. DEA also will provide, within fifteen calendar days of receiving a request for certification from a Federal department or agency, the same written notice to the prospective bidder and end-user, and this notice also will contain a statement of the legal and factual basis for the refusal of certification. The prospective bidder and end-user may, within thirty calendar days of receipt of notification of the refusal, submit written comments or written objections to the Administrator's refusal. At the same time, the prospective bidder and end-user also may provide supporting documentation to contest the Administrator's refusal. If such written comments or written objections raise issues regarding any finding of fact or conclusion of law upon which the refusal is based, the Administrator will reconsider the refusal of the proposed sale in light of the written comments or written objections filed. Thereafter, within a reasonable time, the Administrator will withdraw or affirm the original refusal of certification as he determines appropriate. The Administrator will provide written reasons for any affirmation of the original refusal. Such affirmation of the original refusal will constitute a final decision for purposes of judicial review under 21 U.S.C. 877.

(f) If the Administrator determines there is reasonable cause to believe that an existing certification should be withdrawn, DEA will provide written notice to the head of a Federal department or agency of such withdrawal under the authority of 21 U.S.C. 890. DEA also will provide, within fifteen calendar days of withdrawal of an existing certification, the same written notice to the bidder and end-user, and this notice also will contain a statement of the legal and factual basis for the withdrawal. The bidder and end-user may, within thirty calendar days of receipt of notification of the withdrawal of the existing certification, submit written comments or written objections to the Administrator's withdrawal. At the same time, the bidder and end-user also may provide supporting documentation to contest the Administrator's withdrawal. If such written comments or written objections raise issues regarding any finding of fact or conclusion of law upon which the withdrawal of the existing certification is based, the Administrator will reconsider the withdrawal of the existing certification in light of the written comments or written objections filed. Thereafter, within a reasonable time, the Administrator will withdraw or affirm the original withdrawal of the existing certification as he determines appropriate. The Administrator will provide written reasons for any affirmation of the original withdrawal of the existing certification. Such affirmation of the original withdrawal of the existing certification will constitute a final decision for purposes of judicial review under 21 U.S.C. 877.

Dated: April 25, 2003.

John B. Brown III,

Acting Administrator.

[FR Doc. 03–11393 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–7496–1]

RIN 2060–AH23

Amendments to Standards of Performance for New Stationary Sources; Monitoring Requirements

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for public comments.

SUMMARY: In this proposal we, the Environmental Protection Agency (EPA), propose to add Procedure 3, Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources, to the regulations. This action provides quality assurance/quality control procedures for a continuous opacity monitoring system (COMS) used for compliance purposes. We are seeking public comments on this proposal.

DATES: *Comments.* You must submit comments so that they are received on or before July 7, 2003.

Public Hearing. If a public hearing has been requested, and anyone contacts us requesting to speak at a public hearing by May 22, 2003, a public hearing will be held on August 6, 2003 beginning at 9 a.m. EST. If you are interested in attending the hearing, you must call the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). If a hearing is held, rebuttal and supplementary information may be submitted to the docket for 30 days following the hearing.

Request to Speak at Hearing. If you wish to present oral testimony at the public hearing, you must call the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**) by July 7, 2003.

ADDRESSES: *Comments.* Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Section I of the **SUPPLEMENTARY INFORMATION** section. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT**.

Public Hearing. If a public hearing is held, it will be held at the EPA campus in Research Triangle Park, North Carolina. You should contact Mr. Solomon Ricks, Source Measurement Analysis Group, Emissions, Monitoring, and Analysis Division (D243–02), U. S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5242, to request to speak at a public hearing or to find out if a hearing will be held.

FOR FURTHER INFORMATION CONTACT: Mr. Solomon Ricks, Source Measurement Analysis Group, Emissions, Monitoring, and Analysis Division (D243–02), U. S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5242; facsimile number (919) 541–1039; electronic mail (e-mail) address: *ricks.solomon@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. A–91–08. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

2. *Electronic Access.* 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 identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information (''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. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B.

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.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification 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.

1. *Electronically.* If you submit an electronic comment as prescribed below, 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 No. A–91–08. 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 electronic mail (e-mail) to *A-and-R-Docket@epa.gov,* Attention Docket ID No. A–91–08. 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 Section I.B.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: Air and Radiation Docket, U.S. Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. A–91–08.

3. *By Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket, U.S. Environmental Protection Agency (West), 1301 Constitution Ave., NW., Room B–102, Washington, DC, 20004, Attention Docket ID No. A–91–08. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.A.1.

II. Outline

We provided the following outline to aid in reading the preamble to this proposal.

I. Introduction
A. Regulatory History of the Proposed Rule
II. Differences between Proposed Method 203 and the Proposed Rule (Procedure 3)
A. Quarterly Performance Audit
B. Corrective Action Section
C. Replacement Opacity Monitors
III. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Paper Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132, Federalism
F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045, Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act

I. Introduction

A. Regulatory History of the Proposed Rule

Procedure 3, Quality Assurance (QA) Requirements for Continuous Opacity Monitoring Systems at Stationary Sources, was originally published in the **Federal Register** on October 7, 1992 (57 FR 46114) as Method 203. At that time, it was proposed as an addition to appendix M, Example Test Methods for State implementation plans (SIP's), in 40 CFR part 51. Concurrently, work was underway to update and revise Performance Specification 1 (PS–1), Performance Specifications for a Continuous Opacity Monitoring System (COMS). It was decided to postpone further work on Method 203 until the revisions to PS–1 were promulgated. Revisions to PS–1 were published in the **Federal Register** on November 25, 1994 (59 FR 60585). Comments on the November 1994 proposal revealed some concern and confusion with the design specifications and with the test procedures to verify compliance with the design specifications. To ensure adequate understanding of the technical issues uncovered in the comments, a public stakeholders' meeting was held on June 12, 1996. As a result of that meeting, representatives from the American Society for Testing and Materials (ASTM) D22.03, a Subcommittee on Ambient Atmospheres and Source Emissions, volunteered to undertake development of a standard practice for opacity monitor manufacturers.

On September 23, 1998, we published a supplemental proposal in the **Federal Register** (63 FR 50824) to incorporate ASTM D 6216–98 by reference into the proposed revisions to PS–1. After addressing the comments from the supplemental proposal, we published PS–1 as a final rule in the **Federal Register** on August 10, 2000 (65 FR 48914).

Following the promulgation of PS–1, we formed a stakeholders' group to address technical concerns, similar to the concerns revealed in PS–1, with Method 203 as it was originally proposed. The stakeholders' group was open to the public and consisted of opacity monitor manufacturers, representatives from the ASTM D22.03 subcommittee, State/local, and regional office personnel. After holding a series of phone conferences, we decided to re-write and re-propose Method 203. The re-write takes into account technological advances in the design and manufacture of opacity monitors, as well as the revisions to PS–1. We decided to re-propose the method as an additional procedure, Procedure 3, to be added to 40 CFR part 60, appendix F, Quality Assurance Procedures for Continuous Emission Monitoring Systems. Today's proposal provides you the opportunity to comment on the changes made to Method 203 (Procedure 3) since its original proposal in October 1992, including the codification of Procedure 3 in the aforementioned appendix. Comments are not limited to the changes contained in this proposal; you may comment on Procedure 3 in its entirety. It is for this reason we are allowing a 60-day comment period.

II. Differences Between Proposed Method 203 and the Proposed Rule (Procedure 3)

A. Quarterly Performance Audit

In re-writing Method 203 we determined that, because of technological advancements in opacity monitors, requirements proposed in October 1992 were no longer necessary. Specifically, regarding the quarterly performance audits, we decided to delete the optical surface dust accumulation check, the stack exit correlation error (pathlength correction factor) check, as well as the zero and upscale response checks.

The design specifications outlined in ASTM D 6216–98, incorporated by reference into PS–1, requires manufacturers to build opacity monitors capable of adjusting the reading due to the accumulation of dust on exposed optical surfaces. Opacity monitors are also required to display the level of dust accumulation. We also determined it to be in the source's best interest to be aware of dust accumulation on a regular basis, since the result of dust accumulation would lead to higher opacity readings.

The stack exit correlation error (pathlength correction factor [PLCF]) was deleted because opacity monitor manufacturers are required to certify the system has been built so that the PLCF either cannot be changed, is recorded during each calibration cycle, or an alarm sounds when the value is changed from the certified value.

The quarterly zero and upscale response checks were deleted because the calibration drift checks (zero and upscale) are required on a daily basis. We determined that requiring zero and upscale response checks in addition to the calibration drift checks offered no additional benefits in verifying the performance of the COMS.

B. Corrective Action Section

Procedure 3 includes a new section describing the corrective action required to return an opacity monitor to normal operation after a specified maintenance or repair procedure has been executed in response to a monitor failure or pending failure. After successful completion of the applicable corrective action, the monitor can be returned to an on-line status which provides valid emission monitoring data as long as the on-going QA requirements are met.

The corrective action section establishes four classes of maintenance and repair procedures: (1) Routine/preventative maintenance, (2) Measurement non-critical repairs, (3) Measurement critical repairs, and (4)

Rebuilt or refurbished analyzers. A table is included detailing the diagnostic tests required to maintain PS–1 certification following the appropriate corrective action.

C. Replacement Opacity Monitors

Procedure 3 also allows the use of a temporary replacement monitor in the event a certified opacity monitor is removed for extended service and the repair of the monitor requires more downtime than the user wishes to incur. The use of a replacement monitor will be allowed provided the monitor meets requirements specified in Procedure 3.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we are required to judge whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this rule is not ''significant'' because none of the listed criteria apply to this action. That is, this proposed rule, if promulgated, would not establish independent requirements for regulated entities. It would only apply where PS–1 is specified as the applicable method to demonstrate compliance with national emission standards or other control requirements. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities because no significant additional cost will be incurred by such entities because of the proposed rule. The requirements of the proposal details quality assurance (QA)/quality control (QC) procedures for COMS to demonstrate continued conformance with PS–1. Facilities required by other rules to use COMS for compliance purposes have some form of QA/QC in place already; this proposal adds only minor additional requirements.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. We formed a stakeholders' group to address technical concerns, similar to the concerns revealed in PS–1, with the proposed rule. The stakeholders' group was open to the public and consisted of opacity monitor manufacturers, representatives from the ASTM D22.03 subcommittee, representatives from electric utilities, State/local, and regional office personnel. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, we must prepare a budgetary impact statement to accompany any proposed rule, or any final rule for which a notice of proposed rulemaking was published, that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Under Section 205, if a budgetary impact statement is required under Section 202, we must select the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule, unless we explain why this alternative is not selected or the selection of this alternative is inconsistent with law. Section 203 requires us to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. Section 204 requires us to develop a process to allow elected State, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

We have determined that this proposed rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector in any one year. Rules establishing test methods and/or quality assurance requirements impose no costs independent from national emission standards which require their use, and such costs are fully reflected in the regulatory impact assessment for those emission standards. We have also determined that this proposed rule does not significantly or uniquely impact small governments. Therefore, today's rule is not subject to the requirements of Section 203 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires that we develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.''

''Policies that have federalism implications'' is defined in the

Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

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

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

This proposed rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives that EPA considered. This proposed rule is not subject to Executive Order 13045 because it is not economically significant under Executive Order 12866 and because it does not concern environmental health and safety risks.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not expected to have a significant adverse affect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act of 1995

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d), Public Law 104–113, requires Federal agencies and departments to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires federal agencies like us to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

During this rulemaking, we identified no voluntary consensus standards that might be applicable. Specifically, there were none which specified quality assurance/quality control procedures for continuous opacity monitoring systems.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Continuous opacity monitoring.

Dated: May 2, 2003.

Christine Todd Whitman,

Administrator.

We propose that 40 CFR part 60 be amended as follows:

1. The authority citation for part 60 continues to read as follows:

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

2. Appendix F of part 60 is amended by adding Procedure 3 to read as follows:

Appendix F to Part 60—Quality Assurance Procedures

* * * * *

Procedure 3—Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources

1. What Are the Purpose and Applicability of Procedure 3? The purpose of Procedure 3 is to help implement procedures established by Performance Specification 1 (PS–1) for testing and verification of continuous opacity monitoring systems (COMS) applicable to new stationary sources by establishing the minimum quality control (QC) and quality assurance (QA) requirements to assess and assure the quality of a continuous opacity monitoring system (COMS). Procedure 3 applies to a COMS used for continuously determining compliance with emission standards as specified in an applicable federally enforceable regulation.

1.1 Who must comply with Procedure 3? You must comply with Procedure 3 if you are required by a federally enforceable regulation to install and operate a COMS on a continuous basis.

1.2 What are the data quality objectives of Procedure 3? The overall data quality objective (DQO) of Procedure 3 is the generation of valid, representative opacity data. Procedure 3 specifies the minimum requirements for controlling and assessing the quality of COMS data submitted to us or the delegated regulatory agency. Procedure 3 requires you to perform periodic evaluations of a COMS performance and to develop and implement QA/QC programs to ensure that a COMS data quality is maintained. You must meet these minimum requirements if you are responsible for one or more COMS used for compliance monitoring.

1.3 What is the intent of the QA/QC procedures found in Procedure 3? Procedure 3 is intended to establish the minimum requirements to verify and maintain an acceptable level of quality of the data produced by COMS. Its general terms are intended to allow you to develop a program that is most effective for your circumstances. You may adopt QA/QC procedures which go beyond these minimum requirements to ensure compliance with applicable regulations.

1.4 When must I comply with Procedure 3? You must comply with Procedure 3

following successful completion of the field audit performance tests outlined in PS–1.

2. What are the basic functions of Procedure 3? The basic functions of Procedure 3 are assessment of the quality of your COMS data, and control and improvement of the quality of the data by implementing QC requirements and corrective actions. Procedure 3 provides requirements for:

(1) Daily instrument zero and upscale drift checks, as well as daily status indicators check,

(2) Quarterly performance audits, which includes the following assessments:

(i) Optical alignment,

(ii) Calibration error,

(iii) Zero compensation, and

(3) Zero alignment.

3. What Special Definitions Apply to Procedure 3? The definitions of Procedure 3 include those provided in PS–1 and ASTM D 6216–98 (incorporated by reference into PS–1), with the following additions:

3.1 *Out-of-Control Periods.* ''Out of control'' means that one or more COMS parameters falls outside of the acceptable limits established by this rule.

(1) *Daily Assessments.* Whenever the calibration drift (CD) exceeds twice the specification of PS–1, the COMS is out-of-control. The beginning of the out-of-control period is the time corresponding to the completion of the daily calibration drift check. The end of the out-of-control period is the time corresponding to the completion of appropriate adjustment and subsequent successful CD assessment.

(2) *Quarterly and Annual Assessment.* Whenever a quarterly performance audit or annual zero alignment indicates unacceptable results, the COMS is out-of-control. The beginning of the out-of-control period is the time corresponding to the completion of the performance audit indicating an unacceptable performance. The end of the out-of-control is the time corresponding to the completion of appropriate corrective actions and subsequent successful audit (or, if applicable, partial audit).

4. What interferences must I avoid? Opacity cannot be measured accurately in the presence of water droplets. Thus, COMS opacity compliance determinations cannot be made when water droplets are present such as downstream of a wet scrubber without reheat or other saturated flue gas locations. Therefore, COMS must be located to avoid interferences with moisture or water droplets.

5. What Do I Need to Know to Ensure the Safety of Persons Using Procedure 3? People using Procedure 3 may be exposed to hazardous materials, operations, and equipment. Procedure 3 does not purport to address all of the safety issues associated with its use. It is your responsibility to establish appropriate safety and health practices, and determine the applicable regulatory limitations before performing this procedure. You should consult the COMS user's manual for specific precautions to take.

6. What Equipment and Supplies Do I Need? The equipment and supplies you need are those specified in PS–1.

7. What Reagents and Standards Do I Need? The reagents and standards you need are those specified in PS–1.

8. What Sample Collection, Preservation, Storage, and Transport Are Relevant to This Procedure? [Reserved]

9. What Quality Control Measures Are Required by This Procedure for My COMS? You must develop and implement a QC program for your COMS. Your QC program must, at a minimum, include written procedures which describe in detail complete step-by-step procedures and operations for the activities in paragraphs (1) through (4):

(1) Procedures for performing drift checks, including both zero and upscale drift, and the status indicators check,

(2) Procedures for performing the quarterly performance audits,

(3) A means of checking the zero alignment of the COMS, and

(4) A program of corrective action for a malfunctioning COMS. The corrective action must include, at a minimum, the requirements specified in Section 10.5.

9.1 What QA/QC documentation must I have? You are required to keep the QA/QC written procedures on record and available for inspection by us, the State and/or local enforcement agency for the life of your COMS or until you are no longer subject to the requirements of this procedure.

9.2 What are the consequences of failing QC audits? Your QC procedures are deemed to be inadequate or your COMS incapable of providing quality data if you fail two consecutive QC audits (*i.e.,* out-of-control conditions revealed by the annual audits or quarterly audits). Therefore, if you fail the same two consecutive quarterly audits or five consecutive daily checks, you must either revise your QC procedures or repair (or replace) your COMS to correct the deficiencies causing the excessive inaccuracies. If you determine your COMS requires extensive repair, you may use a substitute COMS provided the substitute meets the requirements specified in Section 10.6.

10. What Calibration and Standardization Procedures Must I Perform for My COMS? You must perform routine system checks to assure proper operation of system electronics and optics, light and radiation sources and detectors, electric or electro-mechanical systems, and general stability of the system calibration. You must subject your COMS to a performance audit, to include checks of the individual COMS components and factor affecting the accuracy of the monitoring data, at least once per calendar quarter. At least annually, you must compare the COMS simulated zero to the actual clear path zero.

10.1 What routine system checks must I perform on my COMS? Necessary components of the routine system checks will depend upon design details of your COMS. At a minimum, you must verify the system operating parameters listed in paragraphs (1) through (3) on a daily basis. Some COMSs may perform one or more of these functions automatically, or as an integral portion of unit operations; other COMS may perform one or more of these functions manually.

(1) You must check the zero drift to assure stability of your COMS response to the zero check value. The simulated zero device, an automated mechanism within the transmissometer that produces a simulated clear path condition or low-level opacity condition, is used to check zero drift. You must, at a minimum, take corrective action on your COMS whenever the daily zero drift exceeds twice the applicable drift specification given in appendix B.

(2) You must check the upscale drift to assure stability of your COMS response to the upscale drift value. The upscale calibration device, an automated mechanism (employing a filter or reduced reflectance device) within the transmissometer that produces an upscale opacity value, is used to check the upscale drift. You must, at a minimum, take corrective action on your COMS whenever the daily upscale drift check exceeds twice the applicable drift specification given in appendix B.

(3) You must, at a minimum, check the status indicators, data acquisition system error messages, and other system self-diagnostic indicators. You must take appropriate corrective actions based on manufacturer's recommendations when the COMS is operating outside preset limits. All COMS data recorded during periods in which the fault status indicators are illuminated are to be considered invalid.

10.2 What are quarterly auditing requirements for my COMS? At a minimum, the parameters listed in paragraphs (1) through (3) are to be included in the quarterly performance audit.

(1) For units with automatic zero compensation, you must determine the zero compensation for the COMS. The value of the zero compensation applied at the time of the audit must be calculated as equivalent opacity, corrected to stack exit conditions, according to the procedures specified by the manufacturer. The compensation applied to the effluent recorded by the monitor system must be recorded.

(2) You must conduct a three-point calibration error test of the COMS. For either calibration error test methods identified below, three neutral density filters, meeting the requirements of PS–1, must be placed in the COMS light beam path for three nonconsecutive readings. The monitor responses must then be independently recorded from the COMS permanent data recorder. Additional guidance for conducting this test is included in section 8.1(3)(ii) of PS–1. The low-, mid-, and high-range calibration error results must be computed as the mean difference and 95 percent confidence interval for the difference between the expected and actual responses of the monitor as corrected to stack exit conditions. The equations necessary to perform the calculations are found in section 12.0 of PS–1. For the calibration error method, you must use the external audit device. You must confirm that the external audit device produces the proper zero value on the COMS data recorder.

(3) You must check the optical alignment of the COMS. The optical alignment must be checked when the stack temperature is ± 20 percent of the typical operating temperature as measured in degrees Farenheit.

10.3 What are the annual auditing requirements for my COMS?

(1) You must perform the primary zero alignment method under clear path conditions. The COMS may be removed from its installation and setup under clear path conditions or, if the process is not operating and the monitor path is free of particulate matter, the zero alignment may be conducted at the installed site. Determining if the monitor path is free of particulate matter can be accomplished by, but is not limited to, the following procedure: (1) Observe the instantaneous or one minute average opacity for at least two hours prior to the clear path adjustment; (2) open the reflector or detector housing and observe the projected light beam and look for the presence of forward scattered light (halo-effect); (3) if the beam observation reveals no perceptible particulate and the 2-hour readings do not vary more than ± 3 percent opacity, adjust the clear path zero based on the lowest opacity reading recorded during the 2-hour period. There must be no adjustments to the monitor other than the establishment of the proper monitor path length and correct optical alignment of the COMS components. You must record the COMS response to a clear condition and to the COMS's simulated zero condition as percent opacity corrected to stack exit conditions. For a COMS with automatic zero compensation, you must disconnect or disable the zero compensation mechanism or record the amount of correction applied to the COMS's simulated zero condition. The response difference in percent opacity to the clear path and simulated zero conditions must be recorded as the zero alignment error. You must adjust the COMS's simulated zero device to provide the same response as the clear path condition. You must perform the zero alignment audits with the COMS off the stack at least every three (3) years.

(2) As an alternative, monitors capable of allowing the installation of an external zero device (commonly referred to as a zero-jig) may use the device for the zero alignment, provided: (1) the zero-jig setting has been established for the monitor path length and recorded for the specific COMS by comparison of the COMS responses to the installed zero-jig and to the clear path condition; and (2) the zero-jig is demonstrated to be capable of producing a consistent zero response when it is repeatedly (*i.e.*, three consecutive installations and removals prior to conducting the final zero alignment check) installed on the COMS. The zero-jig setting must be permanently set at the time of initial zeroing to the clear path zero value and protected when not in use to ensure that the setting equivalent to zero opacity does not change. The zero-jig setting must be checked and recorded prior to initiating the zero alignment. If the zero-jig setting has changed, you must remove the COMS from the stack in order to reset the zero-jig. If you employ a zero-jig, you must perform the zero alignment audits with the COMS off the stack every three (3) years. If the zero-jig is adjusted within the three-year period, you must perform the zero alignment with the COMS off the stack three years from the date of adjustment.

10.4 What are my limits for excessive audit inaccuracy? Unless specified otherwise in the applicable subpart, the criteria for excessive inaccuracy are listed in paragraphs (1) through (4).

(1) What is the criterion for excessive zero or upscale drift? Your COMS is out-of-control if either the zero drift check or upscale drift check exceeds twice the applicable drift specification in appendix B for any one day.

(2) What is the criterion for excessive zero alignment? Your COMS is out-of-control if the zero alignment exceeds 2 percent opacity.

(3) What is the criterion to pass the quarterly performance audit? Your COMS is out-of-control if the results of a quarterly performance audit indicate noncompliance with the following criteria:

(i) The optical alignment misalignment error exceeds 3 percent opacity,

(ii) The zero compensation exceeds 4 percent opacity, or

(iii)The calibration error exceeds 3 percent opacity.

(4) What is the criterion for data capture? The data capture will be considered insufficient if your COMS fails to obtain valid opacity data for at least 95 percent of your operating hours per calendar quarter, considering COMS downtime for all causes (*e.g.*, monitor malfunctions, data system failures, preventative maintenance, unknown causes, etc.) except for downtime associated with routine zero and upscale checks and QA/QC activities required by this procedure. Whenever less than 95 percent of the valid data averages are obtained, you must either:

(i) Perform additional QA/QC activities as deemed necessary to assure acceptable data capture, or

(ii) Determine if the COMS is functioning properly. If your COMS is malfunctioning, you may use a substitute COMS until repairs are made, provided the substitute meets the requirements specified in Section 10.6.

10.5 What corrective action must I take if my COMS is malfunctioning? You must have a corrective action program in place to address the repair and/or maintenance of your COMS. There are four classes of maintenance and repair procedures to be considered; the classes are described in paragraphs (1) through (4). They may be performed either at the manufacturer's facility, a service provider's facility, the user's instrument laboratory, or at the stack/duct at the discretion of the owner/operator and within the recommendations of the manufacturer. They must be performed by persons either skilled and/or trained in the operation and maintenance of the analyzer. After the repair/maintenance of your COMS, you must ensure the COMS is still in compliance with PS–1. Table 17–1 outlines the tests required to maintain PS–1 certification.

(1) *Routine/preventative maintenance.* Includes the routine replacement of consumables, cleaning of optical surfaces, and adjustment of monitor operating parameters as needed to maintain normal operation. Replacement of consumables which have the possibility of adversely affecting the performance of an analyzer may cause the nature of the maintenance procedure to fall within one of the classifications described below.

(2) *Measurement Non-Critical Repairs.* Includes repair and/or replacement of standard non-critical components, the unique characteristics of which do not materially affect the performance of the monitor. These components include, but are not limited to, resistors, capacitors, inductors, transformers, semiconductors such as discrete components and integrated circuits, brackets and machined parts (not associated with internal optical components), cabling and connectors, electro mechanical components such as relays, solenoids, motors, switches, blowers, air filters, pressure/flow indicators, tubing, indicator lights, fuses, software with the same version and/or revision level, glass windows (uncoated or anti-reflection coated, but with no curvature), lenses with mounts where such mounts are not adjustable as installed, circuit boards where such boards are interchangeable and without unique adjustments (except offset and gain adjustments) for the specific analyzer of the same model, with such repairs to include the maintenance procedures required to ensure that the analyzer is appropriately setup.

(3) Replace or repair the primary measurement light source.

(4) *Measurement Critical Repairs.* Includes repair and/or replacement of measurement sensitive components, the unique characteristics of which may materially affect the performance of the monitor. These components include, but are not limited to, optical detectors associated with the opacity measurement/reference beam(s), spectrally selective optical filters, beam splitters, internal zero and/or upscale reference reflective or transmissive materials, electro-optical light switches, retro reflectors, adjustable apertures used on external zero devices or reflectors, lenses which have an adjustable mount, circuit boards which are not completely interchangeable and/or require unique adjustments for the specific analyzer, with such repairs to include the maintenance procedures required to ensure that the analyzer is appropriately setup.

(5) *Rebuilt or Refurbished analyzers.* Includes analyzers for which a major sub-assembly(ies) has/have been replaced or multiple lesser sub-assemblies with different revision levels from the original have been replaced and/or modified. Also, to be defined as a major change in the analyzer measurement detection and processing hardware or software.

(6) For other repairs or replacements not specifically described above, you must consult the manufacturer for the appropriate classification of that procedure. Manufacturers must use the above guidelines in determining the appropriate classification and provide a written recommendation. The final determination as to which category a given repair falls within will be made by the Administrator.

10.6 What requirements must I meet if I use a substitute opacity monitor? In the event your certified opacity monitor has to be removed for extended service, you may install a temporary replacement monitor to obtain required opacity emissions data, provided that:

(1) The temporary monitor is a like-kind replacement, where like-kind is defined as made by the same manufacturer; carries the same model number; uses the same reflector

configuration as the original (and may use the actual original reflector unit) for double pass monitors, or uses the same source or detector configuration as the original for single pass monitors (and may use the actual original source or detector unit—whichever one that did not fail); uses the same of later revision of software/firmware; setup with the same selection of configuration parameters; provides the same input/output signals; and uses the same peripheral equipment. Same in this context means the same as the original certified monitor which is being temporarily replaced,

(2) The temporary monitor has been certified according to ASTM D 6216–98 for which a manufacturer's certificate of conformance (MCOC) has been provided,

(3) The temporary monitor has not been used for more than 720 hours (30 days) of operation per year as a replacement for a fully certified opacity monitor on one location. After that time, the analyzer must complete a full certification according to PS–1 prior to further use as a temporary replacement monitor. Once a temporary replacement monitor has been installed and required testing and adjustments have been successfully completed, it can not be replaced by another temporary replacement monitor to avoid the full PS–1 certification testing required after 720 hours (30 days) of use,

(4) The temporary monitor has been installed and successfully completed an optical alignment assessment and status indicator assessment,

(5) The temporary monitor has successfully completed an off-stack clear path zero assessment and zero calibration value adjustment procedure,

(6) The temporary monitor has successfully completed an abbreviated zero and upscale drift check consisting of seven zero and upscale calibration value drift checks which may be conducted within a 24-hour period with not more than one calibration drift check every three hours, and not less than one calibration drift check every 25 hours. Calculated zero and upscale drift requirements are the same as specified for the normal PS–1 certification,

(7) The temporary monitor has successfully completed a three point calibration error test,

(8) The upscale reference calibration check value of the new monitor has been updated in the associated data recording equipment,

(9) The overall calibration of the monitor and data recording equipment has been verified, and

(10) The user has documented all of the above in the maintenance log, or in other appropriate permanent maintained records.

10.7 When do the out-of-control periods begin and end? The out-of-control periods are as specified in Section 3.1.

10.8 What are the limitations on use of my COMS data collected during out-of-control periods? During the period your COMS is out-of-control, you may not use your COMS data to calculate emission compliance or to meet minimum data availability requirements in this procedure or the applicable regulation.

10.9 What are the QA/QC reporting requirements for my COMS? You must report the accuracy results from Section 10 for your COMS at the interval specified in this procedure or the applicable regulation. Report the drift and accuracy information as a Data Assessment Report (DAR), and include one copy of this DAR for each quarterly audit with the report of emissions required under the applicable regulation. An example DAR is provided in Procedure 1, appendix F of this part.

10.10 What minimum information must I include in my DAR? As a minimum, you must include the information listed in paragraphs (1) through (5) in the DAR.

(1) Your name and address,

(2) Identification and location of your COMS(s),

(3) Manufacturer, model and serial number of your COMS(s),

(4) Assessment of COMS data accuracy/acceptability, and date of assessment, as determined by a performance audit described in section 10. If the accuracy audit results show your COMS to be out-of-control, you must report both the audit results showing your COMS to be out-of-control and the results of the audit following corrective action showing your COMS to be operating within specifications, and

(5) Summary of all corrective actions you took when you determined your COMS to be out-of-control.

10.11 Where and how long must I retain the QA data that this procedure requires me to record for my COMS? You must keep the records required by this procedure for your COMS onsite and available for inspection by us, the State and/or local enforcement agency for a period of 5 years.

11. What Analytical Procedures Apply to This Procedure? [Reserved]

12. What Calculations and Data Analysis Must I Perform for My COMS? The calcalations required for the performance audit are contained in Section 12 of PS–1.

13. Method Performance. [Reserved]

14. Pollution Prevention. [Reserved]

15. Waste Management. [Reserved]

16. Which References Are Relevant to This Procedure?

16.1 Performance Specification 1—Specifications and Test Procedures for Continuous Opacity Monitor Systems in Stationary Sources, 40 CFR part 60, appendix B, August 10, 2000.

16.2 ASTM D 6216–98: Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications. American Society for Testing and Materials (ASTM), April 1998.

17. What Tables, Diagrams, Flowcharts, and Validation Data Are Relevant to This Procedure?

17.1 Table 17.1—Diagnostic Tests Required to Maintain PS–1 Certification Status for COMS.

Description of event	Optical alignment	Optical alignment indicator assessment (Note 1)	Zero calibration check	Clear path (off-stack) zero assessment (Note 3)	Upscale calibration check	Calibration error check	Fault status indicator check	Averaging peirod calculation and recording	7-day zero and upscale drift check (Note 2)	Recertify per PS–1	New MCOC per ASTM D 6216–98	Comments
(1) Replace or repair components described as routine and/or preventative maintenance.	X	.....	X	.....	X	.....	X	.....	.....	.....	.....	Includes replacement of blowers, cleaning optical surfaces, resetting adjustable parameters to maintain normal performance, etc.
(2) Replace or repair primary measurement light.	X	X	X	X	X	.....	X	.....	.....	.....	.....	Light source uniformity and position are key source to many performance parameters
(3) Replace or repair components which are Measurement Non-Critical.	X	.....	X	.....	X	X	X	.....	.....	.....	.....	See text description, sec. 10.5(2)
(4) Replace or repair components which are Measurement Critical.	X	X	X	X	X	X	X	.....	X	.....	.....	See text description, sec. 10.5(3)

Description of event	Optical alignment	Optical alignment indicator assessment (Note 1)	Zero calibration check	Clear path (off-stack) zero assessment (Note 3)	Upscale calibration check	Calibration error check	Fault status indicator check	Averaging peirod calculation and recording	7-day zero and upscale drift check (Note 2)	Recertify per PS–1	New MCOC per ASTM D 6216–98	Comments
(5) Replace or repair components which are Measurement Critical, but not involving optical or electro-optical components.	.....	.....	X	.....	X	X	X	X	.....	.....	.....	Includes change of components involving data acquisition and recording
(6) Rebuild or Substantially Refurbish the analyzer.	.....	.....	.....	.....	.....	.....	.....	.....	.....	XX	.....	See text description, sec. 10.5(4)
(7) Change to, or addition of, analyzer components which may affect MCOC-specified performance parameters.	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X	Significant changes which are not part of the MCOC-designated configuration

Notes: (1) Optical alignment indicator assessment requires the operator to verify during an off the stack clear path zero assessment that the beam is centered on the reflector/retro reflector when the alignment indicator indicates on-axis centered alignment. If not, the analyzer optical train must be adjusted until this condition is met.

(2) 7-day zero and upscale drift assessment. Opacity measurement data recorded prior to completion of the 7-day drift test will be considered as valid provided that the first 7-day drift test is successful, that it is completed within 14 days of completion of the repair, and that other QA requirements are met during this time period.

(3) Requires verification of the external zero jig response, or re-calibration of the same, after the off-stack clear path zero has been re-established.

[FR Doc. 03–11472 Filed 5–7–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AH86

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal. Availability of Record of Decision.

SUMMARY: We, the Fish and Wildlife Service (Service) have determined that we are unable to authorize the incidental, unintentional take of small numbers of Florida manatees (*Trichechus manatus latirostris*) resulting from governmental activities related to the authorization, regulation, or funding of watercraft and watercraft access facilities within certain regions of the species' range in Florida. Comments and new information received during the public comment period for our proposed rule to authorize such incidental take raised significant questions about the standards, information, and analytic methodologies appropriate for making the necessary findings. These significant questions preclude us from finding that incidental takings of Florida manatee resulting from these governmental activities will have a negligible impact on any of the four stocks in Florida. The Marine Mammal Protection Act (MMPA) does not allow us to authorize incidental take unless we are able to find that the total authorized incidental take will have no more than a negligible impact on the species or stock. Therefore, pursuant to 50 CFR 18.27(d)(4), we are making negative findings for all four stocks. Consistent with this determination we are withdrawing our November 2002 MMPA proposed rule to authorize the incidental take of Florida manatees.

We published a proposed regulation and announced the availability of a Draft Environmental Impact Statement (DEIS) in the **Federal Register** on November 14, 2002. We announced the availability of a Final Environmental Impact Statement (FEIS) for this decision on April 4, 2003. Responses to comments received during the public comment period for the proposed rule and DEIS are available in Appendix N of the FEIS. Through this notice, we are also announcing the availability of the Record of Decision related to the FEIS.

ADDRESSES: If you wish to review the FEIS and Record of Decision, obtain copies by any one of the following methods:

1. You may visit our Web site at *http://northflorida.fws.gov*.
2. You may request a copy by electronic mail (e-mail) to *manatee@fws.gov*.
3. You may write the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.
4. You may call the Jacksonville Field Office, 904/232–2580, during normal business hours from 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Pete Benjamin, at the above address (telephone 904/232–2580; or visit our Web site at *http://northflorida.fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2002, the Service published a proposed rule to authorize the incidental, unintentional take of small numbers of Florida manatees (*Trichechus manatus latirostris*) resulting from government activities that authorize and regulate watercraft and watercraft access facilities in Florida. Under the provisions of the MMPA of 1972 (16 U.S.C. 1361–1407), all take, including incidental take, is prohibited unless otherwise authorized. To date, there is no authorization for the incidental, unintentional death, injury, or harassment of Florida manatees caused by these otherwise legal activities. In the proposed rule, we examined the issue of take of Florida manatees to determine whether the incidental, unintentional take of manatees could be authorized.

The Secretary of the Interior may authorize the incidental taking of small numbers of marine mammals resulting from specified activities in a specified geographic area pursuant to 16 U.S.C.

1371(a)(5)(A) of the MMPA if the Secretary finds, based on the best scientific evidence available, that the total authorized taking for the authorized period will have no more than a negligible impact on the species or stock. Negligible impact is defined as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' (50 CFR 18.27(c)).

If a negligible impact finding is made, specific regulations must be established for the activities that describe permissible methods of taking; means of effecting the least practicable adverse impact on the species and its habitat; and requirements for monitoring and reporting. If the Secretary cannot find that the total taking will have a negligible impact on the species or stock, the Secretary must publish a negative finding in the **Federal Register** along with the basis for such a determination (50 CFR 18.27(d)(4)).

Manatee Lawsuit Settlement

In *Save the Manatee Club, et al.* v. *Ballard, et al.*, Civil No. 00–00076 EGS (D.D.C.), several organizations and individuals filed suit against the Service and the U.S. Army Corps of Engineers alleging violations of the MMPA, the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531–1543), the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), and the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*). Four groups representing development and boating interests intervened. Following extensive negotiations, a settlement agreement was approved by the court on January 5, 2001. Under the terms of the settlement, the Service agreed to take several actions, including pursuing a rulemaking proceeding to adopt incidental take regulations under the MMPA. According to the settlement agreement, draft and final products were due on November 5, 2002, and May 5, 2003, respectively. The agreement further specified that, if, during the rulemaking process, we determined that requirements of the MMPA could not be met, then we must submit a negative finding to the **Federal Register** by May 5, 2003.

Beginning in January 2001, the Service held a series of meetings with the affected agencies to discuss the scope of government activities and incidental take rulemaking. At the Manatee Population Ecology and Management Workshop in April 2002, the Service discussed the issue of incidental take rulemaking with scientists and managers involved in manatee research and conservation. On June 10, 2002, the Service published a notice in the **Federal Register** (67 FR 39668) announcing our intent to prepare an EIS to evaluate the effects on manatees of a rulemaking to authorize incidental take; public comments were solicited. On November 14, 2002, the Service published in the **Federal Register** (67 FR 69077) a proposed rule and notice of availability for the Draft EIS and announced six public hearings and the commencement of the public comment period. We published a notice on November 29, 2002, announcing a seventh public hearing (67 FR 71127). In December 2002, the Service conducted seven public hearings throughout Florida. On January 9, 2003, we extended the public comment period from its original closing date of January 13, 2003, to January 27, 2003 (68 FR 1175).

In response to these notices, meetings, and public hearings, over 8,000 written comments were received. The majority of these comments related to manatee population issues; NEPA, ESA, and MMPA concerns; recommendations regarding the proposed determination of negligible impact under the MMPA; identification of information needs believed necessary to adequately address issues of concern; and socioeconomic and public involvement concerns. The comments and our responses are provided in Appendix N of the FEIS. The Service refined the Incidental Take Model, an analytic tool; examined and fully considered all comments submitted by the public; and released a Final Environmental Impact Statement (FEIS) on March 26, 2003, with a notice of availability published in the **Federal Register** on April 4, 2003 (68 FR 16544).

We identified four distinct stocks of the Florida manatee, which we call the Upper St. Johns River, the Northwest, the Atlantic, and the Southwest stocks. In addition to the No Action Alternative, the FEIS evaluated a range of action alternatives that included findings of negligible impact for between one (Upper St. Johns River) to three stocks (Upper St. Johns River, Northwest, and Atlantic). The FEIS presented information, including new information, as well as a comparison of results from different methodologies for determining negligible impact. The FEIS also identified areas of uncertainty in various methodologies, stated pertinent information needs, and presented criticisms of each methodology and of our population benchmark criteria.

Proposed Rule

In the proposed rule, we made the following findings with respect to the effects of watercraft-related incidental take on each stock—(1) Current levels of watercraft-related incidental take were having a negligible impact on the Upper St. Johns River and Northwest stocks; (2) current incidental take levels were having a greater than negligible impact on the Atlantic stock, but incidental take could be reduced to the negligible level with implementation of additional mitigating measures; and (3) current levels of incidental take were having a greater than negligible impact on the Southwest stock, and mitigating measures were not available to reduce this take to a negligible level.

The rationale behind the negligible impact threshold presented in the proposed rule was: In terms of stocks that are depleted (*i.e.*, population levels below Optimum Sustainable Population (OSP)), it is generally accepted that the large majority of annual net productivity must be reserved for the recovery of the stock to its OSP level, and that only a small portion should be allocated for incidental take, so that human-related take does not significantly increase the time needed to reach OSP. Therefore, based on our interpretation of the MMPA, its implementing regulations, previous incidental take rulemakings, and our current understanding of manatee population dynamics, we concluded that, in order for us to determine that the allowable level of human-related incidental take would have a ''negligible impact,'' we must be reasonably certain that the take would not significantly increase the time needed to achieve OSP (67 FR 69086). Our negligible impact standard, based on the above rationale, was reasonable certainty that authorized incidental take will not significantly increase the time needed to reach OSP (67 FR 69086). OSP is defined in the MMPA as ''the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element'' (16 U.S.C. 1362).

We relied on criteria developed through the ESA recovery planning process to assess the status of the manatee stocks against the negligible impact standard. The proposed rule stated that, as concluded in the newly revised Florida Manatee Recovery Plan, the Florida manatee population could be considered to be ''healthy'' and able to sustain itself after the demographic benchmarks were met for all four stocks

based on at least a 20-year data set. Assuming that none of the stocks were severely depleted when data collection relative to the demographic benchmarks began (in the late 1970s and 1980s), 20 years of continued growth at the benchmark rates would in all likelihood result in stocks that are within or near the range of OSP. As such, we believed it was reasonable to assume that achievement of the demographic benchmarks would result in a population that is within or near the range of OSP, and that the negligible impact threshold would be that level of incidental take that does not significantly increase the time needed to achieve the demographic benchmarks (67 FR 69087).

Applying these standards to the best information available at the time of the proposed rule, we concluded that the Northwest and Upper St. Johns River stocks were currently meeting the demographic benchmarks and were progressing toward OSP at a biologically acceptable rate (*i.e.*, current incidental take was having a negligible impact). Regarding the Atlantic stock, we determined that it was close to the demographic benchmarks, and would meet the negligible impact standard provided additional mitigation measures were implemented to reduce take. The Southwest stock was not close to meeting the demographic benchmarks, so we proposed a negative finding with respect to that stock. We stated that it might be possible to refine this analysis for the final rule using a stochastic manatee population model (67 FR 69091), which will be referred to hereafter as the ''Incidental Take Model.'' The Incidental Take Model structure was described in the proposed rule and DEIS, but was not completed at the time the proposed rule was published. It was included in Appendix I of the FEIS.

Discussion and Findings

Standards and Assumptions

Some of the standards and assumptions that supported our proposed rule have been questioned. This includes criteria for quantifying negligible impact and assumptions about OSP and the status of each stock (including population growth rate).

We quantified the negligible impact standard as that which would not exceed a five percent probability of delaying a stock's time to reach its OSP by no more than 10 percent. The specific probability and delay values were selected based on standards used by other agencies for other types of regulations under the MMPA, and because the 95 percent probability is frequently used in statistical decision-making. We are currently considering whether this is an appropriate standard for incidental take caused by watercraft.

We also assumed that, if historical population levels were sufficiently high relative to carrying capacity, continued growth at the benchmark rates would result in population levels that are within or near OSP. This assumption played a role in our conclusions that current levels of watercraft-related take are either not currently delaying the time to reach OSP or are mitigable, depending on the stock.

Information developed during the rulemaking process, but not available until after the DEIS and proposed rule were published and made available, calls into question some of the assumptions upon which our analysis was based. One of the uncertainties raised by the new information is that all four stocks may be further from OSP, and growing at a slower rate than we originally thought. In short, new information challenges the verity of the assumptions that we built into our negligible impact criteria.

We are also reconsidering the use of the recruitment benchmark because we have no data that allow us to generate confidence intervals for the percent of females with first and second year calves, which undermines our current ability to evaluate the status of the stocks against this benchmark.

In summary, some of the assumptions relied upon in our negligible impact criteria and standards have been called into question. Key among these are:

- The assumption that achievement of demographic benchmarks developed through an ESA recovery plan will result in a population that is within or near the range of OSP;
- The recruitment benchmark, which is complicated by gaps in our understanding of the percent of females with first and second year calves;
- The biological implications of our assumptions about the linkage between (1) stock status, and (2) population benchmarks;
- The significance of various probabilities of delay in the time to reaching OSP; and
- The time it takes to reach OSP.

New Information

We gained significant information about manatee populations and trends after the proposed rule and DEIS were made available to the public. Some fundamental questions about our understanding occurred as a result of collecting the information necessary to refine the Incidental Take Model. The most important new information included new estimates of watercraft-related mortality, age-related survivorship, trends in carrying capacity, and demographic trends in the Atlantic Stock.

New information about carcass recovery suggests that rates vary significantly by stock, which challenges our estimates of watercraft-related mortality in all four stocks. Manatee carcass recovery rate is our leading indicator of the fraction of mortality due to watercraft. The carcass recovery rate (the fraction of dead manatees recovered by the carcass salvage program) plays a role in the calculation of negligible impact, because it serves as the link between the numbers of observed and actual watercraft-related mortalities. The fraction of mortality due to watercraft also can be used to calculate the survival rate in the absence of take, hence the degree to which take-reduction could improve the population growth rate. Both of these quantities have only recently been estimated from Florida Marine Research Institute data, and a peer review of the analysis has not been conducted. Further, only a point estimate for recovery rate in each region is available, which means that we do not yet have an expression for the uncertainty in that rate.

New information about carrying capacity suggests that it may decline over the next 3 to 60 years, which would affect density-dependent life history and management functions of the Florida manatee. The limiting factor for the carrying capacity of each stock is warm water refugia. Each stock of Florida manatees is variably dependent on natural and artificial warm water refugia, such as springs, sewerage outfalls, and power plant discharges. Preliminary information presented in the Incidental Take Model, but not yet peer reviewed, suggests that a reduction in total warm water carrying capacity is possible, if not likely, in the near future. This would suggest that OSP will change over time. Our implicit assumption of a stable OSP is challenged by this information. This, in turn, has implications for our interpretation of total population estimates, and our assumption that none of the stocks were severely depleted based on the demographic benchmarks.

We also are considering how information gaps may affect our ability to make a negligible impact determination for Florida manatee. The most important information gap is our limited understanding of density-dependent effects on manatees.

Methodologies

Questions have been raised about the analytic methods we proposed to use to determine negligible impacts. We stated that, to be negligible, authorized incidental take must be reasonably certain not to significantly delay the time to reach OSP. We also said that the final determination may be informed by an Incidental Take Model (which was presented in the DEIS, or a refined version, included in the FEIS as Appendix I). Comments received during the comment period included suggestions for two alternative methodologies, the Potential Biological Removal (PBR) level, and a method which we characterize as the Fraction of Excess Growth (FEG) method.

The PBR for each species or stock of marine mammal is calculated as part of the Stock Assessment required under section 117 of the MMPA, and is defined as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its OSP. PBR is typically used for determinations for the purpose of regulating commercial fishing activities under the MMPA, but is not used by the Department of the Interior for analyzing incidental take for activities other than commercial fishing.

The FEG method assumes that negligible impact includes both a delay in time to reach OSP and a percent of annual growth harvested through incidental take functions. As suggested, this method concludes that any incidental take that delays the time to reach OSP by 10 percent or more, or that harvests 10 percent or more of annual growth rate, exceeds negligible levels.

The Incidental Take Model is based on a model developed by USGS and presented at the April 2002 Manatee Population Ecology and Management Workshop. The model projects population trends for each of the four manatee stocks based on repeated simulations that incorporate environmental and demographic variability, as well as varying levels of human-related take. In the proposed rule, we stated that the initial model used the best available science, and that the Manatee Population Ecology and Management Workshop attendees believed that it was the most suitable model for use in the negligible impact determination. However, the Incidental Take Model currently projects population trends, including the negligible impact criteria, in 20-year increments, which exceeds the 5-year increments required in the MMPA. This approach is currently being assessed.

The qualitative assessment methodology used the initial results of the April 2002 version of the Incidental Take Model, and was described in detail in the proposed rule. This analytic methodology was applied to make the proposed findings.

Conclusion

After carefully considering the various analytic methodologies and relevant information generated during the public comment period, we conclude that the questions regarding standards and assumptions, new information, and analytic methodologies preclude us from finding that under the requirements set out in 50 CFR 18.27, incidental take resulting from government activities related to the authorization, regulation, or funding of watercraft and watercraft access facilities within certain regions of Florida will have a negligible impact on any of the four stocks of Florida manatee. Therefore, pursuant to 50 CFR 18.27(d)(4), we are withdrawing our November 2002 MMPA proposed rule to authorize the incidental take of Florida manatees and are publishing this notice as our findings.

Relationship Between MMPA Incidental Take Authorization and ESA Section 7 Consultation

We wish to clarify the relationship between an MMPA incidental take rulemaking and review of proposed watercraft access projects under section 7 of the ESA. The manatee is listed as an endangered species under the ESA and is also a marine mammal. As such, both the MMPA and the ESA prohibit the incidental take of Florida manatees in the course of conducting otherwise lawful activities, unless authorized. Through section 7 of the ESA, the Service can authorize the incidental take of listed species when take is reasonably certain to occur as a result of Federal actions as long as specific ESA requirements are met. However, if the listed species is also a marine mammal, incidental take authorization under the MMPA must be in place before incidental take under the ESA can be authorized. This rulemaking process analyzed whether incidental take could be authorized for any of the four stocks under the MMPA, which would have allowed the Service to authorize incidental take for these stocks under section 7 of the ESA.

Actions To Be Taken

The following describes additional efforts to improve manatee protection.

(1) We will continue to manage our consultation program to ensure that our responsibilities under section 7 of the ESA are fulfilled in accordance with our regulations and policies, and that these responsibilities are executed efficiently without imposing undue delays or burdens on the regulated public.

Over the past 2 years, we have made several alterations to our ESA section 7 procedures related to Corps of Engineers' authorization of new watercraft access facilities. Many members of the public apparently believed that these changes were precipitated by the MMPA incidental take proposed rule, which is not the case. Rather, these changes occurred during the same time period as development and publication of the proposed rule. Similarly, in accordance with the settlement agreement in *Save the Manatee Club, et al.* v. *Ballard, et al.*, the Service's Interim Strategy for review of watercraft access permits (*i.e.*, docks, boat ramps, and marinas) remained in effect through publication of the final MMPA incidental take determination.

With the publication of this final decision regarding MMPA incidental take regulations for manatee, the Service's Interim Strategy for review of watercraft access permits is no longer in effect. Therefore, the Service will conduct manatee consultations in accordance with section 7 of the ESA and its implementing regulations and policies.

Because no MMPA incidental take regulations have been promulgated the Service is precluded from authorizing incidental take of manatees in the ESA consultation process for any project that would be reasonably certain to result in take of manatees. In making its determinations, the Service will give consideration to State and/or local manatee protection measures, State-approved manatee protection plans and similar measures, and will use the best available scientific and commercial information, including information on law enforcement efforts and the adequacy of manatee speed zones and their signage.

(2) We have proposed additional protection measures in Duval, St. Johns, Clay, Volusia, and Lee counties (68 FR 16601, April 4, 2003).

(3) We will coordinate with the Florida Fish and Wildlife Conservation Commission to review and comment on county Manatee Protection Plans and will give consideration to approved plans and protection measures in our section 7 consultations.

(4) We will establish the Working Group on Watercraft-related Incidental

Take as a subcommittee of the Florida Manatee Recovery Team.

(5) We have initiated a status review of the Florida manatee pursuant to section 4(c)(2) of the ESA.

(6) We will be revising the Florida manatee stock assessment to reflect our determination that the four regional populations of Florida manatees are separate stocks, as defined by the MMPA. The stock assessment will build from and complement the status review to include a summary of the most recent data that provides the biological basis for separating the population into four stocks.

References Cited

A complete list of all references cited in this rule is available upon request from the Jacksonville Field Office (*see* **ADDRESSES** section).

Author

The primary author of this document is Pete Benjamin (*see* **ADDRESSES** section).

Dated: May 3, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–11480 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 68, No. 89

Thursday, May 8, 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

Animal and Plant Health Inspection Service

[Docket No. 03–045–1]

Determination of Regulatory Review Period for Purposes of Patent Extension; Fel-O-Vax® FIV Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has determined the regulatory review period for Fel-O-Vax® FIV Vaccine and is publishing this notice of that determination as required by law. We have made this determination in response to the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that veterinary biologic.

DATES: We will consider all requests for revision of the regulatory review period determination that we receive on or before June 9, 2003. We will consider all due diligence petitions that we receive on or before November 4, 2003.

ADDRESSES: You may submit revision requests and due diligence petitions by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your request or petition (an original and three copies) to: Docket No. 03–045–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your revision request or due diligence petition refers to Docket No. 03–045–1. If you use e-mail, address your request or petition to *regulations@aphis.usda.gov.* Your request or petition must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–045–1'' on the subject line.

You may request a copy of the regulatory review period determination by writing to Dr. Larry Ludemann, USDA, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010–8197, or by calling (515) 232–5785. Please refer to the docket number, date, and complete title of this notice when requesting copies.

A copy of the regulatory review period determination and any revision requests or due diligence petitions that we receive on this determination are available for public inspection in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245; fax (301) 734–4314. For information regarding the regulatory review period determination, contact Dr. Larry Ludemann, APHIS, VS, CVB–LPD, 510 South 17th Street, Suite 104, Ames, IA 50010–8197; phone (515) 232–5785.

SUPPLEMENTARY INFORMATION: The provisions of 35 U.S.C. 156, ''Extension of patent term,'' provide, generally, that a patent for a product may be extended for a period of up to 5 years as long as the patent claims a product that, among other things, was subject to a regulatory review period before its commercial marketing or use. (The term ''product'' is defined in that section as ''a drug product'' [which includes veterinary biological products] or ''any medical device, food additive, or color additive subject to regulation under the Federal Food, Drug, and Cosmetic Act.'') A product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

The regulations in 9 CFR part 124, ''Patent Term Restoration'' (referred to below as the regulations), set forth procedures and requirements for the Animal and Plant Health Inspection Service's (APHIS) review of applications for the extension of the term of certain patents for veterinary biological products pursuant to 35 U.S.C. 156. As identified in the regulations, the responsibilities of APHIS include:

- Assisting Patent and Trademark Office of the U.S. Department of Commerce in determining eligibility for patent term restoration;
- Determining the length of a product's regulatory review period;
- If petitioned, reviewing and ruling on due diligence challenges to APHIS's regulatory review period determinations; and
- Conducting hearings to review initial APHIS findings on due diligence challenges.

The regulations are designed to be used in conjunction with regulations issued by the Patent and Trademark Office concerning patent term extension, which may be found at 37 CFR 1.710 through 1.791.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For veterinary biologics, the testing phase begins on the date the authorization to prepare an experimental veterinary biologic became effective and runs until the approval phase begins. The approval phase begins on the date an application for a license was initially submitted for approval and ends on the date such license was issued. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award, APHIS' determination of the length of a regulatory review period for a veterinary biologic will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(5)(B).

APHIS recently licensed for production and marketing the veterinary biologic Fel-O-Vax® FIV Vaccine. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Fel-O-

Vax® FIV Vaccine (U.S. Patent No. 5,275,813) from the Regents of the University of California, and the Patent and Trademark Office requested APHIS' assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 11, 2003, APHIS advised the Patent and Trademark Office that this veterinary biologic had undergone a regulatory review period and that the approval of Fel-O-Vax® FIV Vaccine (Feline Immunodeficiency Virus Vaccine, Killed Virus) represented the first permitted commercial licensing or use of the product. Subsequently, the Patent and Trademark Office requested that APHIS determine the product's regulatory review period.

APHIS has determined that the applicable regulatory review period for Fel-O-Vax® FIV Vaccine is 3,853 days. Of this time, 2,442 days occurred during the testing phase of the regulatory review period, and 1,411 days occurred during the approval phase. These periods were derived from the following dates:

1. *The date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act (21 U.S.C. 151 et seq.) became effective:* August 28, 1991. APHIS has verified the applicant's claim that the test was begun on August 28, 1991.

2. *The date the application for a license was initially submitted for approval under the Virus-Serum-Toxin Act:* May 4, 1998. APHIS has verified the applicant's claim that the application was initially submitted on May 4, 1998.

3. *The date the license was issued:* March 14, 2002. APHIS has verified the applicant's claim that the license for the commercial marketing of the vaccine was issued on March 14, 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 3,853 days of patent term extension.

Section 124.22 of the regulations provides that any interested person may request a revision of the regulatory review period determination within 30 days of the date of this notice (see **DATES** above). The request must specify the following:

- The identity of the product;
- The identity of the applicant for patent term restoration;
- The docket number of this notice; and
- The basis for the request for revision, including any documentary evidence.

Further, under § 124.30 of the regulations, any interested person may file a petition with APHIS, no later than 180 days after the date of this notice (see **DATES** above), alleging that a license applicant did not act with due diligence in seeking APHIS approval of the product during the regulatory review period. The filing, format, and content of a petition must be as described in the regulations in ''Subpart D—Due Diligence Petitions'' (§§ 124.30 through 124.33).

Authority: 35 U.S.C. 156.

Done in Washington, DC, this 1st day of May 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–11436 Filed 5–7–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Economic, Social, and Cultural Aspects of Livestock Ranching

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on a new one-time information collection, Economic, Social, and Cultural Aspects of Livestock Ranching on the Santa Fe and Carson National Forests. The collection is necessary to provide baseline data on the economic, social, and cultural contributions of livestock ownership in northern New Mexico. The information provided by this study, will help the Forest Service administer grazing permits more effectively to better meet the needs of grazing permittees in northern New Mexico. The information will also be used for purposes of public education.

DATES: Comments must be received in writing on or before July 7, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Carol Raish, Research Social Scientist, or to Alice M. McSweeney, Social Science Analyst, USDA Forest Service, Rocky Mountain Research Station, 333 Broadway SE., Suite 115, Albuquerque, NM 87102–3497.

Comments also may be submitted via facsimile to (505) 724–3688 or by e-mail to: *craish@fs.fed.us* or *amcsweeney@fs.fed.us.* The public may inspect comments received at 333 Broadway SE., Ste. 115, Albuquerque, NM 87106–3497 during normal business hours. Visitors are encouraged to call ahead to (505) 724–3666 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Carol Raish, Rocky Mountain Research Station, telephone: (505) 724–3666, or Alice M. McSweeney, Rocky Mountain Research Station, telephone: (505) 724–3677. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Description of Information Collections

Title: Economic, Social, and Cultural Aspects of Livestock Ranching on the Santa Fe and Carson National Forests.

OMB Number: 0596–New.

Expiration Date of Approval: New.

Type of Request: New.

Abstract: Management of Federal lands is often hampered because land managing agencies lack sufficient information to understand and monitor socio-cultural values and changing attitudes toward land and resource use. This lack of up-to-date information impedes efforts of the Forest Service (FS) to work with livestock ranchers who graze their cattle under permit on Forest Service managed lands (permittees).

In northern New Mexico, many grazing permittees are descendants of Hispanic settlers who farmed and ranched in the area for 400 years. Prior to U.S. takeover of the region in 1848, much of the land now grazed under Federal permits was owned or used by local communities under Spanish and Mexican land grants. Cultural differences and historic problems over land use contribute to disagreements and misunderstandings between the permittees and Federal land managers.

The study for which this information collection is needed will encompass all grazing permittees on the Espanola District of the Santa Fe National Forest and the Canjilon District of the Carson National Forest. It will provide data on economic, social, and cultural contributions of livestock ownership to the grazing permittees of northern New Mexico. A prior pilot study conducted in 1998 on the two forests; along with

studies conducted in the late 1960s and 1970s require updating and revision to provide the most current information. Additionally, the pilot study indicates that there is a need for a broader base of data.

The results of this research should help agency personnel manage the land more effectively and work more cooperatively with livestock grazing permittees. Such information may also serve to improve agency relations with area communities by promoting greater understanding of the local culture and the role of livestock ownership in that culture. As the public becomes more involved in the federal land management decision-making process, the need for public education on the relationship between land and the rural way of life increases.

To collect the required information, social science researchers from the Rocky Mountain Research Station, USDA Forest Service will personally administer a questionnaire to grazing permittees from the Santa Fe and Carson National Forests. Respondents who are unable to schedule an interview will have the option of returning their completed questionnaire by mail.

The data collected will describe the economic, social, and cultural contributions of livestock operations to grazing permittees including: (1) Background information on the permittee and his/her family; (2) background information on the livestock operation; (3) contribution of the livestock operation to the household economy; (4) contribution of the livestock operation to the cultural, and lifestyle; (5) land use values of the family and community. After completing the information collection, researchers will compile and analyze the data.

The compiled data from this study will be used to assist managers on the two forests to work more effectively with grazing permittees by encouraging increased intercultural understanding. Additionally, the collected information may be used in developing and updating grazing allotment plans and in developing forest plan revisions. This type of information is also valuable in public education programs concerning the rural culture of northern New Mexico. The results of this study will also serve as the foundation for multiple research publications.

Since this study is designed to provide information on small-scale livestock operations on Federal allotments, its implementation is of considerable importance. If this data is not collected, grazing allotment plans and forest plan revisions for the target forests will not be based on the most current and appropriate socio-cultural and economic information. Furthermore, agency relations with the community may be hindered from a lack of knowledge that might otherwise help to promote intercultural understanding and cooperation.

Estimate of Annual Burden: One and a half hours.

Type of Respondents: Livestock ranchers/owners who have permits to graze cattle or sheep on the Santa Fe and Carson National Forests in northern New Mexico.

Estimated Annual Number of Respondents: 600 respondents.

Estimated Annual Number of Responses per Respondent: One time. This is a one-time collection of information.

Estimated Total Annual Burden on Respondents: 900 total hours. This is a one-time collection of information.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: May 2, 2003.

Robert Lewis, Jr.,

Deputy Chief, Research and Development.

[FR Doc. 03–11409 Filed 5–7–03; 8:45 am]

BILLING CODE 3410–11–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: May 13, 2003; 3 p.m.–4:15 p.m.

PLACE: Radio Free Asia, 2025 M Street, NW., Suite 300, Washington, DC 20036.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contract either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: May 5, 2003.

Carol Booker,

Legal Counsel.

[FR Doc. 03–11604 Filed 5–6–03; 2:11 pm]

BILLING CODE 8230–01–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–845, A–122–847]

Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determinations of sales at less than fair value.

SUMMARY: We preliminarily determine that durum wheat and hard red spring wheat from Canada are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on these preliminary determinations. If these investigations proceed normally, we will make our

final determinations within 75 days of these preliminary determinations.

EFFECTIVE DATE: May 8, 2003.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder, Julie Santoboni, or Cole Kyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0189, (202) 482–4194, or (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the initiation of these investigations (*Notice of Initiation of Antidumping Duty Investigations: Certain Durum Wheat and Hard Red Spring Wheat from Canada,* 67 FR 65947 (October 29, 2002) (''*Initiation Notice*''), the following events have occurred:

On November 1, 2002, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes. We received numerous comments on our proposed matching criteria in November and December 2002. Furthermore, we held discussions on the issue of model matching with officials from the North American Millers Association and the U.S. Department of Agriculture on November 15 and 20, 2002, respectively. On December 6, 2002, the Department adopted the model match criteria and hierarchy for these proceedings. *See* Memorandum to John Brinkmann, ''Selection of Model Matching Criteria for Purposes of the Antidumping Duty Questionnaire,'' dated December 6, 2002, which is on file in the Central Records Unit (''CRU'') in room B–099 of the main Department building.

On November 25, 2002, the United States International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that imports of durum wheat and hard red spring (''HRS'') wheat from Canada are materially injuring the United States durum wheat and HRS wheat industries (*see* ITC Investigation Nos. 731–TA–1019A and 1019B (Publication No. 3563)).

On December 4, 2002, we selected the Canadian Wheat Board (''CWB'') as the mandatory respondent in these proceedings. For further discussion, *see* Memorandum to John Brinkmann, ''Respondent Selection'' dated December 4, 2002 (''*Respondent Selection Memorandum*''), which is on file in the CRU. We subsequently issued the antidumping questionnaires to the CWB on December 9, 2002.

On November 18, 2002, the Government of Canada (''GOC'') submitted two scope exclusion requests. *See* ''Scope Comments'' section, below. On December 12, 2002, the petitioners [1] submitted their rebuttal comments. The GOC and the petitioners submitted additional comments on February 4 and 11, 2003, respectively.

On December 23, 2002, the petitioners submitted comments in support of their allegation that a particular market situation, within the meaning of section 773(a)(1)(C)(iii) of the Tariff Act of 1930, as amended (''the Act''), exists with regard to sales of durum wheat and HRS wheat in Canada. Further information and comments were received from the CWB, the petitioners, and the GOC throughout January 2003. On February 4, 2003, the Department informed interested parties that, based on evidence on the records of these investigations as of that date, we determined that it is appropriate for the Department to collect Canadian home market sales data for use as the basis for normal value. *See* ''Selection of Comparison Market,'' below.

In January and February 2003, the Department received responses to sections A, B, and C of the Department's original questionnaire from the CWB. The Department issued supplemental questionnaires for sections A, B, and C in February and March 2003, and received responses from the CWB from February through April 2003.

On January 24, 2003, pursuant to section 733(c)(1)(B) of the Act, we determined that these proceedings are extraordinarily complicated and that additional time was necessary to make our preliminary determinations. Therefore, we postponed the preliminary determinations until no later than May 1, 2003. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada,* 67 FR 24114 (January 31, 2003).

On January 29, 2003, the petitioners made an allegation of sales below the cost of production (''COP'') against sales of HRS wheat from Canada. On February 19, 2003, the petitioners revised their sales-below-COP allegation on HRS wheat and also alleged that sales of durum wheat in Canada were made at prices below COP. The petitioners supplemented their cost allegation on February 24, 2003. The CWB submitted comments on these cost allegations on February 7, 24, and 27, 2003. On February 25, 2003, the Department initiated a cost investigation on Canadian sales of HRS wheat. *See* Memorandum to Neal Halper, ''Certain Hard Red Spring Wheat from Canada: Petitioner's Allegation of Sales Below the Cost of Production by the Canadian Wheat Board,'' dated February 25, 2003, which is on file in the CRU.

Also, on February 25, 2003, we solicited comments from interested parties regarding the selection of cost respondents in the sales-below-cost investigation of HRS wheat. We received comments from the petitioners and the CWB on February 28, March 3, and March 7, 2003. On March 10, 2003, we solicited additional comments from interested parties on our proposed cost respondent selection methodology. On March 12, 2003, we received comments on the proposed cost respondent selection methodology from the petitioners and the CWB. Thereafter, on March 14, 2003, the Department issued a section D questionnaire to selected cost respondents. The Department received responses to section D of the Department's questionnaire on April 21, 2003. Supplemental questionnaires for section D will be issued subsequent to the preliminary determination on HRS wheat.

On February 28, 2003, the Department determined not to initiate a cost investigation on Canadian sales of durum wheat. *See* Memorandum to Neal Halper, ''Certain Durum Wheat from Canada: Petitioner's Allegation of Sales Below the Cost of Production by the Canadian Wheat Board,'' dated February 28, 2003, which is on file in the CRU. On March 10, 2003, the petitioners requested that the Department reconsider its decision to not initiate an investigation of sales below COP by the CWB. The petitioners submitted further information and comments on March 14, 21, 27, and 31, 2003. On March 12, 25, and 28, 2003, the CWB filed comments opposing the petitioners' request for reconsideration. On April 8, 2003, the Department reaffirmed its decision not to initiate a cost investigation on Canadian sales of durum wheat. *See* Memorandum to Susan Kuhbach, Acting Deputy Assistant Secretary, ''Antidumping Duty Investigation of Certain Durum Wheat from Canada; Request for the Department to Reconsider its Decision to Not Initiate an Investigation of Sales Below the Cost of production by the Canadian Wheat Board,'' dated April 8, 2003, which is on file in the CRU.

On April 23 and 25, 2003, the petitioners submitted comments with

[1] The petitioners are the North Dakota Wheat Commission (''NDWC'') (hard red spring wheat), the Durum Growers Trade Action Committee (durum wheat), and the U.S. Durum Growers Association (durum wheat).

respect to the upcoming preliminary determinations.

Scope of Investigations

For purposes of these investigations, the products covered are (1) durum wheat and (2) hard red spring wheat.

A. Durum Wheat

Imports covered by this investigation are all varieties of durum wheat from Canada. This includes, but is not limited to, a variety commonly referred to as Canada Western Amber Durum. The merchandise subject to this investigation is currently classifiable under the following Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 1001.10.00.10, 1001.10.00.91, 1001.10.00.92, 1001.10.00.95, 1001.10.00.96, and 1001.10.00.99. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

B. Hard Red Spring Wheat

Imports covered by this investigation are all varieties of hard red spring wheat from Canada. This includes, but is not limited to, varieties commonly referred to as Canada Western Red Spring, Canada Western Extra Strong, and Canada Prairie Spring Red. The merchandise subject to this investigation is currently classifiable under the following HTSUS subheadings: 1001.90.10.00, 1001.90.20.05, 1001.90.20.11, 1001.90.20.12, 1001.90.20.13, 1001.90.20.14, 1001.90.20.16, 1001.90.20.19, 1001.90.20.21, 1001.90.20.22, 1001.90.20.23, 1001.90.20.24, 1001.90.20.26, 1001.90.20.29, 1001.90.20.35, and 1001.90.20.96. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Scope Comments

In accordance with our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice* (*see* 67 FR 65948).

On November 18, 2002, we received a request from the GOC to amend the scope of these investigations and the companion countervailing duty (''CVD'') investigations of hard red spring wheat and durum wheat. Specifically, the GOC requested that the scope be amended to exclude those areas of Canada where the CWB does not have jurisdiction, and to remove Harmonized Tariff Schedule number 1001.90.20.96 from the scope of the antidumping and CVD investigations of certain hard red spring wheat.

On December 12, 2002, the petitioners submitted rebuttal comments. On February 4, 2003, the GOC responded to those comments, and on February 11, 2003, the petitioners commented on the GOC's February 4, 2003 comments.

In the concurrent CVD investigations of durum wheat and HRS wheat from Canada, the Department preliminarily determined that these scope exclusions were not warranted. For further discussion, *see* the March 3, 2003 memorandum to Acting Deputy Assistant Secretary Susan H. Kuhbach, ''Scope Exclusion Requests: Non-Canadian Wheat Board Areas and HTSUS 1001.90.20.96,'' on file in the CRU for the instant proceedings; and *Preliminary Affirmative Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations With Final Antidumping Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada,* 68 FR 11374, 11375 (March 10, 2003).

Period of Investigation

The period of investigation (''POI'') is July 1, 2001, through June 30, 2002. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition (*i.e.*, September 13, 2002).

Fair Value Comparisons

To determine whether sales of durum wheat and hard red spring wheat from Canada to the United States were made at less than fair value (''LTFV''), we compared the export price (''EP'') to the normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs to NVs. Any specific changes to the EP and NV calculations are discussed in the May 1, 2003, calculation memoranda, which are on file in the CRU (''Calculation Memoranda'').

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the CWB in the home market during the POI that fit the description in the ''Scope of Investigations'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical merchandise made in the home market, where possible. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

To identify identical and similar merchandise for purposes of comparing U.S. and home market sales, we developed several product characteristics. Specifically, for durum wheat, we asked the CWB to report information on the type, grade, protein content, vitreous kernel content, test weight, and moisture content, for each sale during the POI. For HRS wheat, we asked the CWB to report information on the type, grade, protein content, class, vitreous kernel content, test weight, and moisture content, for each sale during the POI.

In its submissions concerning model matching, as well as in its initial questionnaire responses, the CWB consistently asserted that it would be unable to provide complete data on vitreous kernel content, test weight, and moisture content, because such data are not normally maintained in the CWB's books and records—in either electronic or hard copy form—in the ordinary course of business. Because the Department found that these product characteristics are appropriate for model matching purposes in these proceedings, we reiterated our request that the CWB supply all available data to the Department. In its April 23, 2003, supplemental questionnaire response, the CWB stated that it had reported all of the product characteristic data available to it. For durum wheat, the CWB reported complete product characteristics for virtually all U.S. sales and reported complete data for approximately half of the home market sales. For HRS wheat, however, the CWB reported complete product characteristic data for only a small number of U.S. and home market sales. The CWB reiterated that, because data on these product characteristics are not maintained in the CWB's normal course of business for a majority of transactions, the sales databases were ''necessarily incomplete.'' *See* CWB's April 23, 2003, submission, at 2.

For purposes of these preliminary determinations, we have accepted the CWB's statement that it has reported all the product characteristic information available to it. However, given the magnitude of the missing data, we intend to verify very carefully the CWB's claim that all data were reported and that it does not consistently collect or maintain data on vitreous kernel

content, test weight, and moisture content. Moreover, we continue to take the position that all the product characteristics selected by the Department are important for making proper comparisons in these proceedings. Therefore, for durum wheat, we have matched U.S. sales for which complete product characteristic data was reported to those home market sales also containing complete product characteristic data, given the fact that we have almost complete U.S. data and complete data on a sufficient number of home market sales. For HRS wheat, however, we would not be able to make meaningful comparisons if we were to rely on all seven product characteristics because of the incompleteness of the U.S. and home market sales databases. Accordingly, we have matched U.S. sales of HRS wheat to home market sales using only the first four product characteristics (*i.e.*, type, grade, protein content, and class). However, we note that, consistent with the methodology outlined in the Memorandum from Theresa L. Caherty and Michael P. Martin to Neal M. Halper, ''Identification of Cost of Production Respondents,'' dated April 22, 2003 (''Cost Respondent Selection Memorandum''), which is on file in the CRU, we have excluded Canadian western extra strong wheat, Canadian prairie spring wheat, and feed wheat from the HRS wheat antidumping duty analysis due to the relatively small quantity of sales of these products to the United States during the POI.

Date of Sale

In its original questionnaire responses, the CWB reported home market and U.S. sales using invoice date as the date of sale. Based on the description of the sales process provided by the CWB, we note that, in the CWB's normal commercial practice, the sales invoice is normally issued after the date of shipment. Because the date of shipment almost always precedes the reported date of sale, we preliminarily determine that the date of shipment better reflects the date on which the CWB established the material terms of sale, in accordance with 19 CFR 351.401(i). Accordingly, we have relied on the date of shipment as the date of sale.

Export Price

For both durum wheat and HRS wheat, we calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States, and because constructed export price methodology was not otherwise warranted. We based EP on the in-store or C&F price to unaffiliated purchasers in the United States. We identified the starting price, where appropriate, by accounting for interest charges/allowances, cleaning allowances, cost of moving charges, late shipment storage charges, rail freight allowances, and billing adjustments, where applicable. The CWB reported agent's commissions as an adjustment to the starting price. We treated these expenses as commission expenses. *See* Calculation Memoranda. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, foreign inland freight (country elevator to terminal, or Thunder Bay to St. Lawrence freight charges), rail carrier charges, hopper car charges, terminal expenses, fobbing costs (charges associated with loading the wheat onto the vessel), demurrage/despatch costs, country elevator storage expenses, freight revenue, and certain other freight charges, which, because of their proprietary nature, cannot be summarized in this notice. *See* Calculation Memoranda. As noted in the Calculation Memoranda, we reclassified certain expenses reported by the CWB as movement expenses as direct selling expenses.

Normal Value

A. Selection of Comparison Market

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP. In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the CWB's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the CWB's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for both durum wheat and HRS wheat.

In the *Initiation Notice,* we determined that information reasonably available to the petitioners indicated the existence of a particular market situation—pursuant to section 773(a)(1)(C)(iii) of the Act—which rendered price comparisons between home market and U.S. prices inappropriate for purposes of determining whether to initiate these investigations. *See Initiation Notice,* 67 FR at 65949. We noted, however, that during the course of these investigations we would examine further the issue of particular market situation and, if necessary, the proper comparison markets to be used in each investigation. *Id.*

In a letter to interested parties dated February 4, 2003, we acknowledged that ''[t]he existence of a government entity, the CWB, as a monopoly buyer and seller of wheat in the Canadian domestic market raised legitimate concerns that a particular market situation might exist with respect to the Canadian home market in these investigations.'' However, based on evidence on the records of these investigations as of that date, we did not find that the Canadian government controls prices to such an extent that they are non-competitive and inappropriate for use in our dumping analyses. Also, in past cases the Department has recognized a strong preference for using the home market in the Department's dumping calculations and, therefore, has established a high threshold for rejecting home market sales based upon a particular market situation.[2] In the case of durum wheat and HRS wheat, we determined that it is appropriate to collect Canadian home market sales data for use as the basis for normal value. However, we also acknowledged that a number of questions needed to be addressed before a final decision on this issue could be rendered and that any decision made on this issue was subject to change based on evidence collected in supplemental

[2] *See Fresh Kiwifruit from New Zealand: Final Results of Antidumping Administrative Review,* 61 FR 46438 (September 3, 1996); *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review,* 62 FR 18404 (April 15, 1997); *Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from South Africa,* 62 FR 61804 (November 14, 1997); *Notice of Final Determination of Sales at Less than Fair Value: Fresh Atlantic Salmon from Chile,* 63 FR 31411 (June 8, 1998); *Final Results of Antidumping Duty Administrative Review: Electrolytic Manganese Dioxide from Greece,* 65 FR 68978 (November 15, 2000).

questionnaires or our findings at verification.

Accordingly, in the February 4, 2003, supplemental section A questionnaire (which was modified slightly on February 20, 2003), we asked the CWB to provide further information regarding the alleged particular market situation. Specifically, we asked questions designed to establish whether the CWB's prices in the home market are based upon competitively set prices and whether the CWB consistently bases its prices on a published U.S. price (*e.g.*, daily prices reported by the Minneapolis Grain Exchange or other sources). On February 21 and March 4, 2003, the CWB submitted responses to the supplemental section A questionnaire. On April 23, 2003, the petitioners submitted additional comments on this issue.

No new information provided by interested parties since our February 4, 2003, letter suggests that the Canadian government controls prices to such an extent that they are non-competitive and inappropriate for use in our dumping analyses. *See* Memorandum to Jeffrey A. May, Deputy Assistant Secretary, ''Particular Market Situation,'' dated May 1, 2003, which is on file in the CRU. Accordingly, we continue to find that it is appropriate to use home market sales for purposes of determining normal value in these investigations. Because this finding is based, in part, on representations by the CWB about how it sets prices in the home market, our decision regarding the appropriateness of Canadian home market prices may be subject to change based upon the results of verification.

B. Affiliated-Party Transactions and Arm's Length Test

In its questionnaire responses, the CWB noted that it is treating grain producers that supply grain to the CWB as affiliated parties, given the various aspects of the relationship between the western Canadian grain producers and the CWB. Specifically, western Canadian grain producers supply the CWB, are members of the CWB, and elect two-thirds of the CWB Board; therefore, according to the CWB, the western Canadian farmers control the CWB Board. *See* the CWB's January 10, 2003, section A questionnaire response, at A–16 to A–17. However, the CWB further noted that, under its ''Producer Direct Sales'' (''PDS'') program, the CWB makes sales to grain producers, and it has treated sales to these producers as unaffiliated party transactions. In other words, the CWB appears to have considered grain producers to be affiliated parties when they supply grain to the CWB, but considered the same entities to be unaffiliated when they act as customers under the PDS program. For purposes of these preliminary determinations, we are treating sales to producers under the PDS program as affiliated party transactions because these entities are affiliated with the CWB pursuant to section 771(33)(G) of the Act.

The Department's standard practice with respect to the use of home market sales to affiliated parties for NV is to determine whether such sales are at arm's length prices. Therefore, in accordance with that practice, we performed an arm's length test on the CWB's sales to affiliates as follows.

Sales to affiliated customers in the home market not made at arm's length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges and direct selling expenses. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c) and *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27355 (May 19, 1997). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. *See, e.g., Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

C. Cost of Production Analysis

As noted above, based on our analysis of an allegation made by the petitioners after initiation of these investigations, we found that there were reasonable grounds to believe or suspect that sales of HRS wheat in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a company-specific sales-below-cost investigation to determine whether sales of HRS wheat were made at prices below their COP.

As noted above in the case history, the Department selected the CWB, the largest exporter of the subject merchandise to the United States during the POI, as the sole respondent in the HRS wheat investigation. The CWB's February 5, 2003, section A questionnaire response stated that it was an exporter of the subject merchandise, not the producer of subject merchandise, and included a list of wheat suppliers. Because there are more than 56,000 HRS wheat producers in Canada, the Department developed a methodology to calculate a representative COP and constructed value (''CV'') for the merchandise under consideration. The Department's cost respondent methodology resulted in stratifying producers of HRS wheat by all relevant soil types within each major producing province in Canada and selecting a sample size that ensured a minimum of two producers within each stratum.[3] The resulting final sample size was twenty-seven producers. A simple average of the costs of production within a stratum was calculated and then the amounts per stratum were weight averaged based on each stratum's delivered tons.

Of the twenty-seven producers selected, one producer (*i.e.*, cost respondent 2)[4] chose not to respond to the Department's questionnaire, two other producers (*i.e.*, cost respondents 10 and 27) did not respond based on extenuating circumstances discussed below, and one other producer (*i.e.*, cost respondent 19) had significant issues with respect to the reporting of its COP. Therefore, as described in detail below, because these producers have not provided the necessary information on the record to calculate the simple-average COP within their respective stratum, the use of facts otherwise available is warranted.

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the

[3] *See* Cost Respondent Selection Memorandum.

[4] Due to the proprietary nature of the name of each producer, we have assigned a number to each farmer (''cost respondent'') that will be used throughout this notice when referring to that specific farmer. A list or code key identifying the name associated with each cost respondent number can be found in attachment 1 of the Memorandum from Theresa L. Caherty and Michael P. Martin to Neal M. Halper, ''Cost of Production and Constructed Value Adjustments for the Preliminary Determination,'' dated May 1, 2003 (''COP/CV Adjustments Memorandum''), which is on file in the CRU.

submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.[5] Section 776(b) of the Act further provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

With respect to cost respondent 2, this producer chose not to respond to the Department's questionnaire. As a result, use of facts available is appropriate pursuant to section 776(a)(2)(A) of the Act. In accordance with section 776(b) of the Act, if the Department finds that ''an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information,'' an adverse inference may be used in determining the facts otherwise available. In the instant case, cost respondent 2 did not cooperate to the best of its ability by failing to provide any of the information requested in the section D cost questionnaire with no rationale for why it could not provide such information when other producers could. Therefore, as adverse facts available for the preliminary determination on HRS wheat for this cost respondent, we used the higher of the COP from the petition for the same province and soil type or the highest reported cost for other cost respondents within the same stratum. Based on our comparison of the two amounts we found that the reported cost for the other cost respondents within the same stratum was higher. As a result, we used the other respondent's COP within the same stratum as the surrogate cost for cost respondent 2.

Both cost respondents 10 and 27 did not respond to the Department's cost questionnaire based on extenuating circumstances. With respect to cost respondent 10, the CWB explained that this farmer had deliveries of HRS wheat to the CWB during the POI, but did not produce HRS wheat during the 2001 growing season. However, cost respondent 10 did have affiliated parties that produced HRS wheat during the cost reporting period. Therefore, as a surrogate, cost respondent 10 reported its affiliate's COP for the cost reporting period. We note that this affiliate was not considered a cost respondent in the sample selection and, as such, we determined it would not be appropriate to include the affiliate's COP in our overall calculation of COP.

Similar to cost respondent 10, cost respondent 27 did not provide cost data for the 2001 growing season because the information was not available. Specifically, cost respondent 27 sold its farming operations and ceased farming. Because neither cost respondent 10 nor 27 had information available that would enable them to respond to the Department's cost questionnaire and—in the case of cost respondent 10—they attempted to provide some cost information, we applied neutral facts available for the HRS wheat preliminary determination pursuant to sections 776(a)(2)(A) and (B) of the Act. As neutral facts available, we have relied on the cost data submitted by the other cost respondents within the same stratum. Therefore, we have not included an amount for these cost respondents in the simple average calculation within their respective stratums.

With respect to cost respondent 19, we note that, unlike the farmers discussed above, it submitted COP information for the cost reporting period. However, due to extenuating circumstances during the 2001 cost reporting period, this cost respondent received insurance proceeds that exceeded its total cost incurred. In addition, due to the extenuating circumstances, the yield per acre of wheat was aberrant compared to the other cost respondents. As a result, we determined that neutral facts available was warranted pursuant to section 776(a)(2)(B) of the Act. As neutral facts available we have relied on the cost data submitted by the other cost respondents within the same stratum. Therefore, we have not included an amount for this cost respondent in the simple average calculation within its stratum.

1. Calculation of COP

As noted above, the sole respondent, the CWB, was an exporter of the subject merchandise, not the producer of subject merchandise. Therefore, consistent with our practice regarding the cost of resales of subject merchandise, we requested COP data from a sample of the CWB's wheat suppliers. *See* Cost Respondent Selection Memorandum. In accordance with section 773(b)(3) of the Act, we calculated a single weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses, interest expenses, and home market packing costs for all wheat producers selected. *See* the ''Test of Comparison Market Sales Prices'' section below for treatment of home market selling expenses. To calculate the weighted average COP, we first simple averaged the COPs within each stratum, then weight averaged the results based on each stratum's delivered tons.

2. Common and Individual Cost Respondent Adjustments

We relied on the COP data submitted by each cost respondent in its cost questionnaire response, except in specific instances where the submitted costs were not appropriately quantified or valued, or where the costs otherwise required adjustment, as discussed below:

(A) Common Cost Respondent Adjustments

1. We adjusted the reported labor costs for cost respondents 1, 3–9, 11–16, 18, 20–22, and 24–26. Virtually all of the labor provided on these farms was performed by the owners. For reporting purposes, the cost respondents relied on labor hours and rates from a study performed by Professor Schoney of the University of Saskatchewan. However, because this data was self-selected by the cost respondents and only represented data collected from a single province (Saskatchewan), we relied instead on the per acre labor rates published in the provincial crop guides.

2. We disallowed a reported offset to the COP for insurance proceeds received during the year by cost respondents 7, 8, 11, 15, 17, 22, 23, 25, and 26. These cost respondents failed to provide any explanation describing the facts surrounding these insurance payments. For example, it is unclear to which year's harvest the payments relate, what crops are affected, or whether the

[5] Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority'' if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information, if it can do so without undue difficulties.

proceeds are based on market value for the damaged crops or to recover lost costs.

3. We adjusted the direct cost pool used to allocate variable and fixed overhead costs for cost respondents 1, 3, 4, 6, 8, 9, 11, 12, 14–16, 20, 21, and 22–26. Specifically, we excluded the cost of purchased livestock (whether expensed or amortized) and imputed labor from the direct cost pool.

4. We deducted imputed labor costs from the denominator used in the calculation of the G&A and financial expenses ratios. We then recalculated the ratio and applied the result to the per-unit cost of manufacture (''COM''), exclusive of imputed labor. This adjustment was made for cost respondents 1, 3–9, 11–18, and 20–26.

For detailed calculations of these adjustments for each cost respondent, *see* the COP/CV Adjustments Memorandum.

(B) Individual Cost Respondent Adjustments

Cost Respondent 1

We reduced cost respondent 1's reported production volume by the amount of seed consumed in 2002.

Cost Respondent 3

We revised cost respondent 3's allocation of land use cost to apportion an amount to pasture land used for grazing livestock.

Cost Respondent 5

We revised cost respondent 5's reported per-unit COM by calculating the per-unit amount using the actual quantity of HRS wheat produced, instead of the quantity of HRS wheat delivered.

Cost Respondent 6

We revised cost respondent 6's per-unit COM by calculating the per-unit amount using the actual quantity of HRS wheat produced. It appears that the cost respondent inadvertently used the incorrect production quantity.

Cost Respondent 7

We revised cost respondent 7's reported cost of production to include the total amount expensed for corporate and partnership start-up costs, in accordance with the cost respondent's normal books and records.

We also increased cost respondent 7's reported cost of production to include labor costs related to bookkeeping services performed by an affiliate.

Cost Respondent 9

We adjusted cost respondent 9's reported insurance costs to reflect the accrued expense. Specifically, we included the total commodity insurance premiums, not only the actual insurance payments.

Cost Respondent 14

For cost respondent 14, we revised the direct cost pool used to allocate variable and fixed overhead costs as noted in the common cost respondent adjustment 3 above. In addition, we included certain expenses (*i.e.*, repairs and maintenance, fuel, etc.) in the direct cost pool that were excluded by the cost respondent.

We increased the numerator used to calculate the G&A expense ratio to include an amount for GST taxes that were deducted twice.

We also increased the numerator for the financial expense ratio by disallowing an offset for short-term interest income. Specifically, we found no evidence on the record in the cost respondent's normal books and records where this income was actually earned and recorded.

Cost Respondent 16

We adjusted cost respondent 16's allocation of custom work expenses.

Cost Respondent 17

We adjusted cost respondent 17's labor to reflect the actual labor expense reported in the cost respondent's normal books and records.

Cost Respondent 21

We disallowed the change in accounting method related to repairs and maintenance expenses. Specifically, for reporting purposes cost respondent 21 capitalized and amortized certain repairs and maintenance expenses. However, these amounts were expensed in the cost respondent's normal books and records. Therefore, for the HRS wheat preliminary determination, we included the total amount expensed in the COP.

Cost Respondent 22

We reduced cost respondent 22's reported production volume by the amount of seed consumed in 2002.

Cost Respondent 23

We revised cost respondent 23's labor to reflect actual labor costs reported in the cost respondent's normal books and records.

We disallowed cost respondent 23's treatment of a secondary wheat product as a by-product offset. For the preliminary determination, we calculated one average cost of HRS wheat for the 2001 growing season. Thus, while we disallowed the offset to HRS wheat costs, we did include the quantity of feed HRS wheat in the denominator of the calculation of the growing season's average HRS wheat cost per ton.

Cost Respondent 25

We adjusted the reported land use cost for cost respondent 25 to include the amount of rent paid to the shareholders for land and to exclude the property taxes personally paid by the shareholders.

3. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of HRS wheat, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were adjusted for any applicable freight revenue, interest charges/allowances, cleaning allowances, cost of moving charges, late shipment storage charges, rail freight allowances, movement charges, billing adjustments, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which did not permit the recovery of all costs within a reasonable period of time.

4. Results of the COP Test

Pursuant to section 773(b)(1), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we determine that the below-cost sales represent ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. If so, we disregard the below-cost sales.

We found that, for certain specific HRS products, more than 20 percent of the CWB's home market sales within an extended period of time were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the

basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent) according to 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[6] including selling functions,[7] class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(7)(A) of the Act and 19 CFR 351.412(c), in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices), we consider the starting prices before any adjustments.

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we make a level of trade adjustment under section 773(a)(7)(A) of the Act.

We obtained information from the CWB regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by the CWB for each channel of distribution. Our level of trade findings are summarized below. Our LOT analyses for durum wheat and HRS wheat, which contain business proprietary information, are incorporated in the Calculation Memoranda.

1. Durum Wheat

The CWB reported seven channels of distribution in the home market, with three customer categories. The first channel of distribution, coded in its submissions as channel 1, included Eastern Water In-store Thunder Bay sales made to unaffiliated resellers and end-users. The second channel of distribution, coded in its submissions as channel 2, were Eastern Water FOB In-store St. Lawrence sales made to unaffiliated resellers. The third channel of distribution, coded in its submissions as channel 3, were Rail to East (not through Thunder Bay) sales made to unaffiliated resellers and end users. The fourth channel of distribution, coded in its submissions as channel 4, were Western Elevator to Mills (acting as a process elevator) sales made to end users. The fifth channel of distribution, coded in its submissions as channel 5, were Western Elevator to Mill (not acting as a process elevator) and Producer Direct sales made to unaffiliated resellers, end users, and producers. Sales to these customer categories in each of these channels were similar with respect to sales process, freight services, warehouse/inventory maintenance, and warranty service. Accordingly, we preliminarily determine that these channels of distribution constitute a distinct LOT (''LOTH1'').

The sixth channel of distribution, coded in its submissions as channel 6, were Western Mill Producer Direct sales made to end users and producers. The seventh channel of distribution, coded in its submissions as channel 10, were Producer Direct Sales, Domestic Feed Sales, or Truck Sales to the United States made to unaffiliated resellers and producers. Sales to these customer categories in both of these channels were similar with respect to sales process, freight services, warehouse/inventory maintenance, and warranty service, but differed from sales to LOTH1 substantially with respect to freight services and warehouse/inventory maintenance. Accordingly, we preliminarily determine that these channels of distribution constitute a distinct LOT (''LOTH2'').

In the U.S. market, the CWB had only EP sales. The CWB reported EP sales to two channels of distribution and three customer categories. The first channel of distribution, coded in its submissions as channel 7, were Rail Minneapolis/Chicago sales made to unaffiliated resellers and end users. Sales to both customer categories in this channel were similar with respect to sales process, freight services, warehouse/inventory maintenance, and warranty service. Accordingly, we preliminarily determine that this channel of distribution constitutes a distinct LOT (''LOTU1'').

The second channel of distribution, coded in its submissions as channel 10, were Producer Direct Sales, Domestic Feed Sales, or Truck Sales to the United States made only to producers. We found that sales in this channel (''LOTU2'') differed substantially from LOTU1 with respect to the sales process, freight service, and warehouse/inventory maintenance, and that sales in each LOT were made at different points in the chain of distribution. Based upon our overall analysis in the U.S. market, we found that LOTU1 and LOTU2 constitute two distinct levels of trade.

The EP level of trade LOTU1 was similar to the home market level of trade LOTH1 with respect to sales process, freight services, warehousing/inventory maintenance, and warranty service, but differed considerably from home market level of trade LOTH2 with respect to freight services and warehousing/inventory maintenance. Consequently, we matched U.S. sales at EP level of trade LOTU1 to sales at the same level of trade in the home market (*i.e.*, LOTH1). Where we did not match products at the same level of trade, and there was a pattern of consistent price differences between different levels of trade, we made a level of trade adjustment. *See* section 773(a)(7)(A) of the Act.

The EP level of trade LOTU2 was similar to the home market level of trade LOTH2 with respect to sales process, freight services, warehousing/inventory maintenance, and warranty service, but differed considerably from home market level of trade LOTH1 with respect to freight services and warehousing/inventory maintenance. Consequently, we matched U.S. sales at EP level of trade LOTU2 to sales at the same level of trade in the home market (*i.e.*, LOTH2). Where we did not match products at the same level of trade, and there was a pattern of consistent price differences between different levels of trade, we made a level of trade

[6] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to determine properly where in the chain of distribution the sales occurred.

[7] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary determinations, we have organized the common durum wheat and hard red spring wheat selling functions into four major categories: Sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. Other selling functions unique to the respondent were considered, as appropriate.

adjustment. *See* section 773(a)(7)(A) of the Act.

2. Hard Red Spring Wheat

The CWB reported seven channels of distribution in the home market, with three customer categories. The first channel of distribution, coded in its submissions as channel 1, included Eastern Water In-store Thunder Bay sales made to unaffiliated resellers and end-users. The second channel of distribution, coded in its submissions as channel 2, were Eastern Water FOB In-store St. Lawrence sales made to end users. The third channel of distribution, coded in its submissions as channel 3, were Rail to East (not through Thunder Bay) sales made to unaffiliated resellers and end users. The fourth channel of distribution, coded in its submissions as channel 4, were Western Elevator to Mills (acting as a process elevator) sales made to unaffiliated resellers and end users. The fifth channel of distribution, coded in its submissions as channel 5, were Western Elevator to Mill (not acting as a process elevator) and Producer Direct sales made to unaffiliated resellers, end users, and producers. Sales to these customer categories in each of these channels were similar with respect to sales process, freight services, warehouse/inventory maintenance, and warranty service. Accordingly, we preliminarily determine that these channels of distribution constitute a distinct LOT (''LOTH1'').

The sixth channel of distribution, coded in its submissions as channel 6, were Western Mill Producer Direct sales made to end users. The seventh channel of distribution, coded in its submissions as channel 10, were Producer Direct Sales, Domestic Feed Sales, or Truck Sales to the United States made to unaffiliated resellers, end users, and producers. Sales to these customer categories in these channels were similar with respect to sales process, freight services, warehouse/inventory maintenance, and warranty service, but differed from sales to LOTH1 substantially with respect to freight services. Accordingly, we preliminarily determine that these channels of distribution constitute a distinct LOT (''LOTH2'').

In the U.S. market, the CWB had only EP sales. The CWB reported EP sales to four channels of distribution and three customer categories. The first channel of distribution, coded in its submissions as channel 7, were Rail Minneapolis/Chicago sales made to unaffiliated resellers and end users. The second channel of distribution, coded in its submissions as channel 8, were Vessel Thunder Bay to Buffalo/Puerto Rico sales made to unaffiliated resellers. The third channel of distribution, coded in its submissions as channel 9, were Vancouver to United States sales made to unaffiliated resellers and end users. Sales to both customer categories in these channels were similar with respect to sales process, freight services, warehouse/inventory maintenance, and warranty service. Accordingly, we preliminarily determine that these channels of distribution constitute a distinct LOT (''LOTU1'').

The fourth channel of distribution, coded in its submissions as channel 10, were Producer Direct Sales, Domestic Feed Sales, or Truck Sales to the United States made to unaffiliated resellers and producers. Sales to both customer categories in this channel were similar with respect to sales process, freight services, warehouse/inventory maintenance, and warranty service. We further found that sales in this channel (''LOTU2'') differed substantially from LOTU1 with respect to freight services and warehouse/inventory maintenance, and that sales in each LOT were made at different points in the chain of distribution. Based upon our overall analysis in the U.S. market, we found that LOTU1 and LOTU2 constitute two distinct levels of trade.

The EP level of trade LOTU1 was similar to the home market level of trade LOTH1 with respect to sales process, freight services, warehousing/inventory maintenance, and warranty service, but differed considerably from home market level of trade LOTH2 with respect to freight services. Consequently, we matched U.S. sales at EP level of trade LOTU1 to sales at the same level of trade in the home market (*i.e.*, LOTH1). Where we did not match products at the same level of trade, and there was a pattern of consistent price differences between different levels of trade, we made a level of trade adjustment. *See* section 773(a)(7)(A) of the Act.

The EP level of trade LOTU2 was similar to the home market level of trade LOTH2 with respect to sales process, freight services, warehousing/inventory maintenance, and warranty service, but differed considerably from home market level of trade LOTH1 with respect to freight services and warehousing/inventory maintenance. Consequently, we matched U.S. sales at EP level of trade LOTU2 to sales at the same level of trade in the home market (*i.e.*, LOTH2). Where we did not match products at the same level of trade, and there was a pattern of consistent price differences between different levels of trade, we made a level of trade adjustment. *See* section 773(a)(7)(A) of the Act.

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on in-store or C&F prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We identified the correct starting price, where appropriate, by accounting for interest charges/allowances, cleaning allowances, cost of moving charges, late shipment storage charges, rail freight allowances, and billing adjustments. We also made adjustments for the following movement expenses, where appropriate, in accordance with section 773(a)(6)(B)(iii) of the Act: Foreign inland freight (from country elevator to terminal or Eastern Canadian Mills, or from Thunder Bay to St. Lawrence), hopper car charges, terminal expenses, fobbing costs, handling and elevation expenses, and country elevator storage expenses. As noted in the Calculation Memoranda, we reclassified certain expenses reported by the CWB as movement expenses as direct selling expenses. Because there are no cost differences attributable to differences in the physical characteristics of the merchandise in these cases, we were not able to make a difference in merchandise adjustment—pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411—based on costs. In addition, where appropriate, we made adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale for imputed credit expenses, tender premiums, car awards performance measures, cleaning costs, weighing/inspection costs, protein premiums, producer revenues, and certain other proprietary adjustments. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the comparison market or on U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset). Finally, where appropriate, we made an adjustment for differences in LOT under section 773(a)(7)(A) of the Act and 19 CFR 351.412(b)–(e).

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve.

Verification

As provided in section 782(i) of the Act, we will verify all information to be

used in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the U.S. Bureau of Customs and Border Protection (''BCBP'') to suspend liquidation of all imports of subject merchandise from Canada that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the BCBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

DURUM WHEAT

Exporter/manufacturer	Weighted-average margin percentage
Canadian Wheat Board ..	8.15
All Others	8.15

HARD RED SPRING WHEAT

Exporter/manufacturer	Weighted-average margin percentage
Canadian Wheat Board ..	6.12
All Others	6.12

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If our final determinations are affirmative, the ITC will determine before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations whether these imports are materially injuring, or threaten material injury to, the U.S. industries.

Disclosure

We will disclose the calculations used in our analyses to parties in these proceedings in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for these investigations must be submitted to the Department no later than 50 days after the date of publication of these preliminary determinations or one week after the issuance of the last verification report, whichever is later. Rebuttal briefs must be filed five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in these investigations, the hearing will tentatively be held two days after submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If these investigations proceed normally, we will make our final determinations within 75 days of these preliminary determinations.

These determinations are published pursuant to sections 733(f) and 777(i) of the Act.

Dated: May 1, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–11486 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–837]

Notice of Rescission of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon Quality Steel Plate From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of countervailing duty administrative review.

SUMMARY: On March 25, 2003, the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on certain cut-to-length carbon quality steel plate (CTL Plate) from the Republic of Korea, covering the period January 1, 2002 through December 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 14394 at 14400 (March 25, 2003). In accordance with 19 CFR 351.213(d)(1) (2002), the Department is now rescinding this review because the requester has withdrawn its request for an administrative review.

EFFECTIVE DATE: May 8, 2003.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Joy Zhang, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 2003, the Department received a letter from Nucor requesting an administrative review of the countervailing order on CTL Plate from Korea. On March 25, 2003, the Department initiated an administrative review of this order for the period January 1, 2002 through December 31, 2002. Nucor submitted a letter dated March 24, 2003, withdrawing its request for the above referenced administrative review.

Scope of the Review

For purposes of this administrative review, the products covered are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of this order are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular 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. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of this order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this order unless otherwise specifically excluded. The following products are specifically excluded from this order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this order is classified in the HTSUS under subheadings: 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, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise covered by these orders is dispositive.

Rescission of Review

Within 90 days of the March 25, 2003, publication of the notice of initiation, Nucor withdrew its request for an administrative review. *See* Letter from Nucor to the Department dated March 24, 2003, on file in the Central Records Unit, Room B–099, Main Building of the Department of Commerce. No other interested party requested a review, and we have received no submissions commenting on Nucor's withdrawal of its request for review.

In accordance with the Department's regulation, 19 CFR 351.213(d)(1), and consistent with its practice, the Department hereby rescinds the administrative review of CTL Plate from Korea for the period January 1, 2002 to December 31, 2002. *See, e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey: Rescission of Countervailing Duty Administrative Review*, 67 FR 42541 (June 24, 2002).

This notice is in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended, and § 351.213(d)(4) of the Department's regulations.

Dated: May 1, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–11485 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Preliminary Results and Partial Rescission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial recission of countervailing duty expedited reviews.

SUMMARY: The Department of Commerce (the Department) is conducting expedited reviews of the countervailing duty order on certain softwood lumber products from Canada for the period April 1, 2000, through March 31, 2001. This notice includes the preliminary results for 28 companies. These preliminary results include 14 companies in Round 1 of the proceeding. *See Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products From Canada* (67 FR 46955; July 17, 2002) (*Notice of Initiation/Round 1*). In addition, these preliminary results of expedited review include 14 companies in Round 2 of the proceeding. *See Notice of Initiation of Expedited Reviews of the Countervailing Duty Order: Certain Softwood Lumber Products from Canada* (67 FR 59252; September 20, 2002) (*Notice of Initiation/Round 2*). For all 28 companies we applied the Group 1 methodology. For information on estimated net subsidies, see the ''Preliminary Results of Reviews'' section of this notice. If the final results remain the same as these preliminary results of reviews, we will instruct the Bureau of Customs and Border Protection (BCBP) to amend the cash deposit for each reviewed company as detailed in the ''Preliminary Results of Reviews'' section of this notice. Interested parties are invited to comment on these preliminary results. In addition, the Department is rescinding expedited reviews of five companies in Round 1 and seven companies in Round 2.

EFFECTIVE DATE: May 8, 2003.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Tipten Troidl, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3338 or (202) 482–1767.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 2002, the Department published in the **Federal Register** its amended final affirmative countervailing duty determination and countervailing duty order on certain softwood lumber products (subject merchandise) from Canada (67 FR 36070), as corrected (67 FR 37775; May 30, 2002) (*Amended Final Determination*). On July 17, 2002, the Department published the *Notice of Initiation/Round 1* which covered 73 companies that filed complete and timely review applications. *See* 67 FR 46955. On September 20, 2002, the Department published the *Notice of Initiation/Round 2*, which covered 31 additional companies. *See* 67 FR 59252. This notice included 23 companies that had corrected incomplete applications

as well as eight companies whose requests were received beyond the initial application deadline for reasons outside the requesters' control.

As explained in the *Notice of Initiation/Round 1*, we segregated applicants into two groups. Group 1 consists of companies that obtain the majority of their wood (over 50 percent of their inputs) from the United States, the Maritime Provinces, Canadian private lands, and Canadian companies excluded from the order, and companies that source less than a majority of their wood from these sources and do not have tenure. Group 2 includes companies that source less than a majority of their wood from these sources and have acquired Crown timber through their own tenure contracts. In Round 1, we found that 45 companies satisfied the requirements of Group 1 and 28 companies satisfied the requirements of Group 2. In Round 2, we found that 22 companies satisfied the requirements of Group 1 and nine companies satisfied the requirement of Group 2.

In our review of the applications in Group 1 in Round 1, we noted that, in order to conduct our analysis, we required only minimal supplemental data for 24 of the 45 companies. The other Group 1 companies required additional information and more extensive analysis. We issued questionnaires to the 24 companies requiring only minimal information and set a short deadline for the response. Of the 24 companies, 18 were able to supply the supplemental information by the deadline. We completed our preliminary analysis of those 18 companies, using the Group 1 methodology (see ''Methodology'' section below). *See Preliminary Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada* (67 FR 52945; August 14, 2002) (*August Preliminary Results*). On November 5, 2002, we published the final results for 13 of the 18 companies covered by the *August Preliminary Results. See Final Results and Partial Recission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products From Canada* (*November Final Results*) (67 FR 67388; November 5, 2002). Concurrent with this notice, we are publishing the final results on three additional companies.

Subsequent to the *August Preliminary Results*, nine Group 1 companies in Round 1 requested an analysis of whether they benefitted from subsidies bestowed on their inputs: American Bayridge Corporation, Blanchette and Blanchette Inc., Goodfellow Inc., Les Bois d'Oeuvre Beaudoin & Gauthier, Meunier Lumber Company Ltd., Mid-America Lumber, Olav Haavaldsrud Timber Company Limited, Treeline Wood Products Limited, and Usine Sartigan Inc. Subsequent to the *Notice of Initiation/Round 2*, three Group 1 companies in Round 2 requested an analysis of whether they benefitted from subsidies bestowed on their inputs: Carson Lake Lumber Limited, Winnipeg Forest Products, Inc., and W.I. Woodtone Industries. We are not including in this notice any of the companies that requested an analysis of whether they benefitted from subsidies bestowed on their inputs.

This notice includes the preliminary results for 28 Group 1 companies (14 in Round 1 and 14 in Round 2).

We received comments and rebuttal comments on the *August Preliminary Results*, on September 6, 2002, and September 18, 2002, respectively, from petitioners and several respondents. We addressed the issues raised in the case and rebuttal briefs in the ''Issues and Decision Memorandum'' (Decision Memorandum), dated concurrently with the *November Final Results* notice. However, we only addressed those issues that were of a general nature or that specifically affected those 13 reviews. We also received comments from petitioners on November 4, 2002, and December 12, 2002. On January 23, 2003, West Bay Forest Products & Manufacturing Ltd. (West Bay), a company covered by these preliminary results, submitted rebuttal comments to petitioners December 12, 2002, comments. In these preliminary results, we are addressing petitioners' November 4, 2002, and December 12, 2002, comments concerning the companies in these preliminary results, West Bay's rebuttal comments, as well as outstanding methodological issues related to Group 1 companies.

Partial Rescission

On October 18, 2002, Doman Industries Limited, a respondent company in Round 2, withdrew its request for review. On October 29, 2002, Jackpine Engineered Wood Products Inc. and Jackpine Forest Products Limited, respondent companies in Round 1, withdrew their requests for review. On February 5, 2002, Domtar Inc., another respondent company in Round 1, withdrew its request for review.

In addition, after examining information submitted by the companies in these expedited reviews proceedings, we find that one company, Francois Giguere Inc., a company in Round 1 did not ship the subject merchandise to the United States during the period of review (April 1, 2000, through March 31, 2001) (POR). In accordance with the Department's practice, companies that did not ship subject merchandise during the period covered by the investigation or review are not eligible to participate in that segment of the proceeding. *See, e.g., Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip from the Republic of Korea* (68 FR 13267; March 19, 2002). Moreover, the application to request an expedited review specifically listed exports of subject merchandise to the United States during the POR as one of the eligibility requirements. Therefore, we are rescinding the expedited review for Francois Giguere Inc.

Similarly, two companies in Round 2, 2859–8936 Quebec Inc. Les Cedre Basques and 9027–7971 Quebec Inc., stated in their applications that they did not have any sales of the subject merchandise to the United States during the POR. Instead, they claim that a wholesaler sold their subject merchandise to the United States during the POR; however, they did not provide a completed application for this wholesaler who exported their subject merchandise, as specifically requested in the application form. Because they did not provide the necessary information with regard to this wholesaler, we are not able to proceed with their expedited reviews. *See* Letter from Melissa Skinner, Director, Office VI, to 2859–8936 Quebec Inc. Les Cedre Basques and Letter from Melissa Skinner to 9027–7971 Quebec Inc., both dated April 11, 2003, on file in the Central Records Unit, Room B–099 of the main Commerce Building. Therefore, we are rescinding the expedited reviews for 2859–8936 Quebec Inc. Les Cedre Basques and 9027–7971 Quebec Inc.

Further, one of the Round 2 companies, Hollcan Millworks Ltd. (Hollcan) did not respond to our January 15, 2003, questionnaire which was due on January 29, 2003. We attempted to contact the company to follow up on the questionnaire and found that the phone line was disconnected and email messages were returned as undeliverable. *See* the Department's March 17, 2003 memorandum to the file regarding Expedited Reviews in the Countervailing Duty Order on Softwood Lumber from Canada (C–122–839), which is on file in room B–099 of the Central Records Unit of the Main Commerce Building. Because Hollcan did not provide the necessary information, we are not able to proceed.

Therefore, we are rescinding the expedited review for Hollcan.

Our analysis of the information submitted by Group 1 companies in Round 1 and Round 2 also indicates that there are several companies that performed no processing or manufacturing with respect to the subject merchandise they sold to the United States during the POR, but rather these companies resold softwood lumber processed/manufactured by other companies. As we clearly indicated in our May 24, 2002, Expedited Review Application, in instances involving resales activity, we require information from all of the reseller's suppliers in order to calculate a net subsidy rate for the reseller. The pure resellers (*i.e.*, companies with no lumber production or manufacturing of their own) identified below did not provide the information originally requested in the Expedited Review Application. In fact, contrary to the Department's instructions in the Expedited Review Application, several of the companies listed below did not fully disclose their resale activities in the application. Moreover, with respect to some companies, it was not until we had analyzed sales information contained in several supplemental questionnaire responses that we realized that they were, in fact, pure resellers. Therefore, we are rescinding the expedited review for the following Round 1 company: Cando Contracting Ltd. In addition, we are rescinding the expedited reviews for the following Round 2 companies: Antrim Cedar Corporation, Goldwood Industries Ltd., and Westwood Wholesale Lumber Ltd.

Finally, we note that one Group 1 company, Kootenay Innovate Wood Inc., is cross-owned with a Group 2 company. As explained below in Comment 1 of the ''Analysis of Comments Received'' section of these preliminary results, Group 1 companies that are cross-owned with Group 2 companies will be processed with the Group 2 companies. Thus, Kootenay has not received a company-specific rate in these preliminary results.

Companies Addressed in These Preliminary Results

This notice includes the preliminary results of review for the following 14 Group 1 companies in Round 1:

Alexandre Cote Ltee.
Boccam Inc.
Byrnexco Inc.
Davron Forest Products Ltd.
Fraser Pacific Forest Products Inc.
Frontier Mills Inc.
Haida Forest Products Ltd.
Landmark Truss & Lumber Inc.
Les Bois S&P Grondin Inc.
Les Industries P.F. Inc.
Sechoirs de Beauce Inc.
Tyee Timber Products Ltd.
West Bay Forest Products and Manufacturing Ltd.
West Can Rail Ltd.

These preliminary results also include the preliminary results of review for the following 14 Group 1 companies in Round 2:

Central Cedar Ltd.
Forstex Industries Inc.
Hudson Mitchell & Sons Lumber Inc.
Indian River Lumber
Les Scieries Jocelyn Lavoie Inc.
Leslie Forest Products Ltd.
Lyle Forest Products Ltd.
Power Wood Corp.
Precision Moulding Products
Ram Co. Lumber Ltd.
Rielly Industrial Lumber Inc.
Sylvanex Lumber Products Inc.
United Wood Frames Inc.
Williamsburg Woods & Garden

Further we are rescinding on the following five companies in Round 1:

Cando Contracting Ltd.
Domtar Inc.
Francois Giguere Inc.
Jackpine Engineered Wood Products Inc.
Jackpine Forest Products Limited

We are also rescinding on the following seven companies in Round 2:

2859–8936 Quebec Inc. Les Cedre Basques 9027–7971 Quebec Inc.
Antrim Cedar Corporation
Doman Industries Limited
Goldwood Industries Ltd.
Hollcan Millworks Ltd.
Westwood Wholesale Lumber Ltd.

Scope of the Reviews

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and BCBP purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada* (67 FR 15539; April 2, 2002) (*see* comment 53, item D, page 116, and comment 57, item B–7, page 126), available at *www.ia.ita.doc.gov*, drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below:

(1) *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box-spring frame kits:* If they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.

(3) *Radius-cut box-spring-frame components*, not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS heading 4421.90.70, 1″ or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify

them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.

(5) *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) The processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to BCBP' satisfaction that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits*,[1] regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, and if included in the purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint.

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

E. For each entry, the following documentation must be retained by the importer and made available to the BCBP upon request:

i. A copy of the appropriate home design, plan, or blueprint matching the entry;

ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

iii. A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that the BCBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.45.90 , 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

1. Trusses and truss kits, properly classified under HTSUS 4418.90;
2. I-joist beams;
3. Assembled box spring frames;
4. Pallets and pallet kits, properly classified under HTSUS 4415.20;
5. Garage doors;
6. Edge-glued wood, properly classified under HTSUS item 4421.90.98.40;
7. Properly classified complete door frames;
8. Properly classified complete window frames;
9. Properly classified furniture.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non-subject status based on U.S. country of origin will be treated as non-subject U.S.-origin merchandise under the countervailing duty order, provided that these softwood lumber products meet the following condition: Upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to BCBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[2] The presumption of non-subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

Methodology

Stumpage Programs

These preliminary results include: (a) Companies that obtain the majority of their wood (over 50 percent of their inputs) from the United States, the Maritime Provinces, Canadian private lands, and/or Canadian companies excluded from the order, and (b) companies that source less than a majority of their wood from these sources and do not have tenure. We calculated company-specific rates based on the methodology described in the *November Final Results*. To obtain the company-specific stumpage benefit, we multiplied the quantity of Crown logs and the quantity of lumber inputs (except for those specified below) by the province-specific stumpage benefit calculated in the underlying investigation, *i.e.*, the average per-unit differential between the calculated adjusted stumpage fee for the relevant province and the appropriate benchmark for that province. For those provinces, such as British Columbia and Ontario, for which we calculated more than one per-unit benefit in the investigation, we calculated one province-wide per-unit benefit by weight-averaging the previously calculated values by the corresponding volumes of harvested softwood (this was done in the *November Final Results*). As indicated in the *Notice of Initiation/ Round 1*, we have not attributed a benefit to (1) logs or lumber acquired from the Maritime Provinces, (2) logs or lumber of U.S. origin, (3) lumber produced by mills excluded in the investigation, and (4) logs from Canadian private land. *See* 67 FR 46955, 46957. Furthermore, we are not including in our subsidy rate calculations logs which the companies demonstrate to have acquired and resold without any processing. In addition, we are also not including in the subsidy calculations lumber purchased and resold without any further production or manufacturing because, as explained below, the companies in these preliminary results failed to submit information regarding their suppliers as originally requested in our expedited review application. We divided the stumpage benefit by the appropriate value of the company's sales (scope and non-scope softwood lumber products and softwood lumber by-products, net of resales) to determine the company's estimated subsidy rate from stumpage and then added any benefit from other programs to obtain the cash deposit rate for the company.

Several companies reported that they are cross-owned with other companies

[1] To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

[2] *See* the scope clarification message (# 3034202), dated February 3, 2003, to the BCBP, regarding treatment of U.S. origin lumber on file in the Central Records Unit, Room B–099 of the main Commerce Building.

that produce and/or manufacture subject merchandise. Specifically, Fraser Pacific Forest Products Inc., Frontier Mills Inc., and Landmark Truss & Lumber Inc. (Landmark Companies) stated that they were cross-owned. Similarly, West Bay Forest Products & Manufacturing Ltd. indicated that it is cross-owned with two companies that produce and/or manufacture subject merchandise, Gold Mountain and Cedarshed (West Bay Companies). With respect to the Landmark and the West Bay Companies, in accordance with § 351.525(b)(6) of the Department's Regulations, we first calculated the benefits for each of the cross-owned companies using the approach described in the ''Methodology'' section of these Preliminary Results. We then summed the benefits attributable to the consolidated, cross-owned entity and divided the total by the entity's consolidated sales denominator (scope and non-scope softwood lumber products and softwood lumber by-products, net of resales).

As discussed above in the ''Partial Rescission'' section of these preliminary results, companies with reselling activities were instructed in the Expedited Review Application to provide information pertaining to their suppliers. However, the Group 1 companies with resale and production activities failed to provide such information. Therefore, the Department is not in a position to calculate the benefit on the portion of their sales attributable to resales. For this reason, lumber that was resold by these companies without any further production or manufacturing will remain subject to the country-wide rate established in the *Amended Final Determination*. Regarding lumber actually produced or manufactured by these companies, we have calculated a company-specific benefit that is based solely on the lumber that the companies have produced. Accordingly, for each Group 1 company included in these preliminary results that produces its own lumber and performs resale activities, we calculated a company-specific-rate for all lumber that the company produces. Lumber that is resold by these companies without any further manufacturing will be subject to the ''Country-Wide Rate'' calculated in the *Final Amended Determination*.

For the period April 1, 2000, to March 31, 2001, we preliminarily determine the net subsidy rate for this program to be as follows for Group 1 companies in Round 1:

Net subsidies—Producer/exporter	Net subsidy rate %
Alexandre Cote Ltee.	9.07
Boccam Inc.	0.41
Byrnexco Inc.	8.40
Davron Forest Products Ltd.	10.94
Fraser Pacific Forest Products Inc.	8.58
Frontier Mills Inc.	8.58
Haida Forest Products Ltd.	2.45
Landmark Truss & Lumber Inc.	8.58
Les Bois S&P Grondin Inc.	4.62
Les Industries P.F. Inc.	8.03
Sechoirs de Beauce Inc.	0.60
Tyee Timber Products Ltd.	4.10
West Bay Forest Products and Manufacturing Ltd.	5.34
West Can Rail Ltd.	0.00

For the period April 1, 2000, to March 31, 2001, we preliminarily determine the net subsidy rate for this program to be as follows for Group 1 companies in Round 2:

Net subsidies—producer/exporter	Net Subsidy rate %
Central Cedar Ltd.	4.91
Forstex Industries Inc.	4.51
Hudson Mitchell & Sons Lumber Inc.	4.31
Indian River Lumber	0.00
Les Scieries Jocelyn Lavoie Inc.	0.00
Leslie Forest Products Ltd.	13.62
Lyle Forest Products Ltd.	3.37
Power Wood Corp.	6.73
Precision Moulding Products	1.41
Ram Co. Lumber Ltd.	8.92
Rielly Industrial Lumber Inc.	55.15
Sylvanex Lumber Products Inc.	7.09
United Wood Frames Inc.	10.69
Williamsburg Woods & Garden	11.95

Other Programs

In the underlying investigation, the Department determined that the provinces of British Columbia and Quebec provided countervailable benefits under certain programs. British Columbia provided countervailable benefits under the Forest Renewal Program and Quebec provided countervailable benefits under the Private Forest Development Program (PFDP), loans issued by Investment Quebec, lending under Article 28 of the Society for the Industrial Development of Quebec (SDI) and loans issues by the Society for the Recuperation and Development of Quebec Forests (Rexfor). Based upon our decision in the underlying investigation, the Department requested information from companies regarding the use of these programs. Four companies from British Columbia reported using the Forest Renewal Program. These were the only companies in these preliminary results that reported using previously investigated non-stumpage programs during the POR. Consistent with our approach in the underlying investigation, we are treating benefits received under the Forest Renewal Program as countervailable grants. In accordance with § 351.524(2), we have allocated all of the benefits provided under this program to the year of receipt because the total amount approved under the subsidy program is less than 0.5 percent of the relevant sales denominator (*i.e.*, total sales of softwood lumber products, net of resales). To calculate the net subsidy rate received under this program, we divided the benefit by the companies' total sales of softwood lumber products, net of resales.

For the period April 1, 2000, to March 31, 2001, we preliminarily determine the net subsidy rate to be as follows for Group 1 companies in Round 1:

Net subsidies—producer/exporter	Net subsidy rate %
Fraser Pacific Forest Products Inc.	0.03
Frontier Mills Inc.	0.03
Landmark Truss and Lumber Inc.	0.03
West Bay Forest Products and Manufacturing	0.16

For the period April 1, 2000, to March 31, 2001, we preliminarily determine the net subsidy rate to be as follows for Group 1 companies in Round 2:

Net subsidies—producer/exporter	Net subsidy rate %
Central Cedar Ltd.	0.05
Leslie Forest Products Ltd.	0.10

Analysis of Comments Received

I. Methodological Comments

The following comments address methodological issues related to Group 1 companies as well as issues concerning the general methodologies the Department is applying in these expedited reviews.

Comment 1: Whether the Same Methodology Should Be Applied to Cross-owned Companies When One Is Assigned to Group 1 and the Other to Group 2. Tembec Inc., Dowie Timber Ltd., Selkirk Specialty Wood Ltd., Mill & Timber Products Ltd., R. Fryer Forest Products Limited, and Liskeard Lumber Ltd. (the Tembec Group) argue that treatment of Group 2 companies becomes more complicated in instances in which a Group 2 company is cross-owned with a Group 1 company. The Tembec Group contends that there is no

indication as to which methodology will be employed for each company in these types of cases. The Tembec Group maintains that if the Department uses the simplified methodology for the Group 1 company and the cost methodology for the Group 2 company, the Department would be in conflict with its own policy to treat cross-owned companies as one entity.

With respect to the treatment of cross-owned companies when one company is in Group 1 and one company is in Group 2, petitioners assert that all cross-owned companies in this situation should be examined using the Group 2 methodology. Petitioners argue that the Group 2 methodology is the most accurate of the two methods and should apply in such cases.

Department's position: We disagree with both respondents and petitioners. The Group 1 and Group 2 benefit calculation methodologies are, more or less, the same, the only difference being that the Group 2 methodology involves the calculation of a benefit attributable to timber harvested from Crown lands based on the company's actual experience. Thus, for Group 1 companies cross-owned with Group 2 companies, the Department will apply the Group 1 benefit calculation methodology to the Group 1 company and apply the Group 2 benefit calculation methodology to the cross-owned company in Group 2. To derive the net subsidy rate applicable to both the Group 1 and Group 2 company that are cross-owned, the Department will sum the two benefit amounts and divide the total by the two companies' consolidated sales denominator (scope and non-scope softwood lumber products and softwood lumber by-products, net of resales). Therefore, with respect to the methodology to be applied to companies whose cross-owned companies may be assigned to a different group, the Department, when calculating the benefit, will apply to each Group 1 or Group 2 company the methodology, regardless of cross-ownership, of the group to which the company is assigned. The rate for the cross-owned companies will be calculated taking into account the results of the two separate calculations. Given this approach, we are unable in these preliminary results to calculate a consolidated net subsidy rate for Group 1 companies that are cross-owned with Group 2 companies because we are still processing and receiving data from Group 2 companies.

Comment 2: Whether Subsidy Amounts Attributed to Logs on the Basis of Volume Should be Equal to Subsidies Amounts Attributed to Lumber and Sawdust. Petitioners argue that the Department was in error in the Issues and Decision Memorandum issued in conjunction with the *November Final Results* in saying ''the Department made no distinction between the amount of subsidy attributed to one cubic meter of lumber and the amount of subsidy attributed to one cubic meter of sawdust.'' *See* page 15 of the *Issues and Decision Memorandum: Final Results of Expedited Reviews of 13 Companies Covered by the August 14, 2002 Notice of Preliminary Results Under the Countervailing Duty Order on Certain Softwood Lumber from Canada (November Issues and Decision Memorandum*). Petitioners contend that this is not supported by the facts and is inconsistent with the countervailing duty methodology and economics. Petitioners contend that the allocation of subsidies is based upon the value of products of the subsidized mills. High-value products are recognized as being more highly subsidized and the majority of the subsidy is allocated to these products. In contrast, the allocation of the subsidy to low-value products is much less.

Petitioners contend that in the lumber investigation, the subsidy was attributed to the value of the lumber products produced from preferentially provided inputs. Moreover, they state that the subsidy calculation is always performed on a value, not a volume basis. They cite to 19 CFR 351.525(a) which states ''the Secretary will calculate the *ad valorem* subsidy rate by dividing the amount of the benefit allocated to the period of investigation or review by the sales value * * *'' Therefore, they argue that the subsidy calculation should be based on the value of the entire input and the value of the entire output since the whole log is required to produce softwood lumber. Petitioners maintain that the Department should clarify that the correct methodology of allocating the subsidy between lumber and by-products, consistent with the underlying investigation, is based on value and not volume.

Moreover, petitioners assert that in the expedited reviews the Department correctly calculated the subsidy by multiplying the per cubic meter benefit on sawtimber by the volume of sawlogs used by the sawmills. However, petitioners contend that the Department also multiplied the province-wide per-cubic-meter benefit on sawtimber by the volume of lumber used as an input by the reviewed lumber company. Petitioners argue that the per-unit benefit on logs is not the same as the per-unit benefit on lumber because it may take as much as two cubic meters of sawtimber to make a cubic meter of lumber.

Petitioners contend that this methodology is inconsistent with the *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada,* 67 FR 15545 (April 2, 2002) (*Final Determination*). They claim that the Department's methodology understates the subsidy amount on lumber. Petitioners argue that the application of a per-unit benefit based on logs to lumber inputs acquired by, for example, a Canadian lumber remanufacturer, would not reflect the full value of the subsidy received when the lumber in question was resold. Petitioners maintain that this methodology is not supported mathematically. Moreover, the fact that this calculation methodology was used in the exclusion process in the underlying investigation provides no basis to continue this error. Although, assert petitioners, they did not have time to address this erroneous methodology in calculating the company-specific exclusions in their briefs, they claim this methodology should be subject to correction in these expedited reviews.

Department's position: We have carefully considered petitioners' comments on the amount of subsidies attributable to lumber acquired as an input. We remain, however, of the view that the methodology that has been followed by the Department is reasonable and in accordance with our practice.

In these expedited reviews, just as in the exclusion process in the investigation, one of the tasks before the Department is to estimate the amount of subsidy attributable to lumber as an input into the manufacturing process. No such value was derived in determining the country-wide rate in the investigation. In that context, we simply calculated the amount of subsidy attributed to timber; we did not—because we did not need to—derive a value for the subsidy attributable to lumber produced from subsidized timber.

In the exclusion process, we estimated the amount of benefit on lumber as an input into the manufacturing process based on the only value available from the investigation, *i.e.* the benefit on timber expressed as a specific dollar amount per cubic meter. Because the amount of the benefit calculated in the investigation was based on volume, we attributed the benefit to lumber on a volume (not value) basis. We applied

this benefit to all lumber, not only to lumber of Crown origin, because, as we stated in the February 20, 2002, Decision Memorandum (Memorandum from Bernard Carreau, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary, regarding Countervailing Duty Investigation on Softwood Lumber Products from Canada), ''as a practical matter it is impossible to distinguish lumber produced from private logs and lumber produced from Crown timber, once it is processed in potentially subsidized mills.'' We used this methodology in the exclusion process and clearly described it in the first initiation notice of the expedited reviews (*Notice of Initiation/Round 1*).

As previously stated in Comment 4 of the *November Issues and Decision Memorandum,* we believe that petitioners had ample opportunity to comment on the accuracy of this methodology during the investigation and in earlier stages of these expedited reviews, particularly when we requested comments on our proposed methodology in the first initiation notice. We received no comments on this issue; therefore, we proceeded with issuing the preliminary results for 18 companies. Petitioners commented after the publication of the *August Preliminary Results*; however, we disagreed with petitioners' position and applied the same methodology in the final results for 13 of those companies.

We find no compelling reason in petitioners' arguments to modify the methodology applied so far. In particular, petitioners have not demonstrated that—given the information that is reasonably available to the Department within the time constraints applicable to these reviews—their approach to attributing subsidies to lumber used as an input is more accurate than the approach used by the Department. Moreover, the Department finds that a change in methodology at this time could be detrimental to the companies under review, who have relied on the current methodology to make a number of decisions, such as whether or not to withdraw from the expedited reviews and whether or not to apply for an upstream analysis. For all these reasons, we are continuing to apply the province-wide stumpage benefit to a unit of lumber in these preliminary results, as we did in the *August Preliminary Results* and the investigation.

Comment 3: Whether Group 1 Companies That Did Not Request an Analysis of Whether They Benefitted From Subsidies Bestowed on Their Inputs Should Be Able To Reassess This Decision. Landmark Truss & Lumber Inc. (Landmark) and its subsidiaries Frontier Mills Inc. and Fraser Pacific Forest Products Inc. maintain that they did not request an analysis of whether they benefitted from subsidies bestowed on their inputs based on their understanding that the final results for Group 1 companies would be issued within the time frames previously announced by the Department. Furthermore, Landmark understood that any results based on an analysis of whether they benefitted from subsidies bestowed on their inputs would not be issued until after the final results of Group 2 companies.

Landmark notes that petitioners have argued in their case brief that the final results of expedited reviews for all companies should be issued simultaneously. Landmark asserts that if the Department decides not to follow its schedule for Group 1 companies and instead issues all expedited reviews simultaneously, then Group 1 companies with the same circumstances as Landmark should be allowed to reassess their decision with respect to requesting an analysis of whether subsidies bestowed on their inputs benefitted them.

Landmark also notes that the Government of Canada (GOC) has argued in case briefs submitted during the course of this proceeding that an analysis of whether the companies benefitted from subsidies bestowed on their inputs should not extend the existing timelines for the expedited reviews and that the Department should issue a proposed methodology for the conduct of this type of analysis. If the Department agrees to complete the analysis on the established schedule or if the Department issues a proposed methodology for the conduct of this type of analysis, Landmark submits that companies similarly situated should be given the opportunity to reassess their decision and to request such an analysis.

Department's Position: In their September 6, 2002, case brief at page 16, the GOC maintained that the Department should allow companies purchasing inputs through arm's length transactions to request expedited reviews subsequent to initiation of the expedited reviews. In the *November Final Results*, we emphasized that allowing other companies to request expedited reviews at that time would complicate and delay an already elaborate and cumbersome process. Similarly, giving companies the opportunity to reassess and request an analysis of whether subsidies bestowed on their inputs benefitted them at this stage in the expedited review process, as Landmark suggests, would further complicate and delay the expedited review process. Therefore, we are not adopting these suggestions.

II. Individual Company Comments

Comment 1: Antrim Cedar Corporation. Petitioners assert that Antrim Cedar's exclusion request in the underlying investigation indicated that it was a reseller of lumber during the POR, however, in these expedited reviews, Antrim reported that it had no resales of logs or lumber.

Department's Position: Antrim's application and subsequent questionnaire responses indicate resales of subject merchandise. However, as indicated above, we are rescinding Antrim's expedited review. The basis of our determination with respect to Antrim's expedited review is explained in the ''Partial Recission'' section of this notice.

Comment 2: Central Cedar Ltd. Petitioners contend that the total value of all sales of subject merchandise reported in Central Cedar's exclusion request differs from the amount reported in its expedited review application.

Department's Position: The exclusion request was in a different segment of the proceeding from these expedited reviews. Therefore, the figures provided in the two segments of the proceeding are not directly comparable. The numbers reported for purposes of these expedited reviews are F.O.B. values and we have sent several questionnaires to the companies clarifying exactly how the sales data should be derived for purposes of these expedited reviews. Companies have provided the clarified data to the Department and we have used it in these preliminary results.

Comment 3: Fraser Pacific Forest Products. Petitioners contend that in the exclusion process, Fraser reported that it was a wholly-owned subsidiary of Landmark Truss and reported total sales of subject merchandise for itself and its affiliated companies. However, petitioners point out that in these expedited reviews, Landmark Truss by itself claimed total sales of subject merchandise without mention of any affiliates. Petitioners assert that the sum of total sales of subject merchandise for these three companies' expedited review applications is a substantial increase over the amount reported for total sales of subject merchandise in the exclusion process.

Department's Position: Fraser Pacific Forest Products has reported in these expedited reviews that it is a wholly-owned subsidiary of Landmark and also cross-owned with Frontier Mills. In

these expedited review proceedings, we have sent several questionnaires to Fraser Pacific, Frontier Mills, and Landmark to clarify the data that was submitted. We have calculated the rate for this company using our cross-owned methodology as described above in the methodology section of this notice. Thus, we have accounted for not only its cross-ownership with Landmark, but also its cross-ownership with Frontier Mills.

Comment 4: Power Wood Corporation (Power Wood) and Rielly Industrial Lumber Inc. (Rielly). Petitioners assert that the total sales of subject merchandise reported in Power Wood's and Rielly's exclusion request differs from the amount reported in the expedited review process. Moreover, petitioners contend that in the company exclusion process these two companies certified that they received no benefit from provincial Crown stumpage in British Columbia. Yet, petitioners point out that in the Power Wood's and Rielly's expedited review application, they reported that they acquired Crown-origin logs from British Columbia during the POR.

Department's Position: As noted in Comment 2 above concerning Central Cedar, these expedited review proceedings are different from the exclusion process. We have provided in these expedited reviews specific instructions how to derive the data for sales. In addition, we have taken into account Power Wood's and Rielly's Crown-origin logs reported in the company's questionnaire response in our calculation for this company's individual cash deposit rate.

Comment 5: Sylvanex Lumber Products Inc. Petitioners argue that in the company exclusion proceeding, Sylvanex Lumber Products Inc. (Sylvanex) reported that they had received government assistance while in these expedited reviews, Sylvanex indicates that they received no government assistance.

Department's Position: As noted in numerous company-specific comments above, the company exclusion segment of the proceeding was different from the expedited review segment of the proceeding. Contrary to petitioners' assertion, during the exclusion process and by letter dated August 21, 2001, Sylvanex reported that it ''did not benefit from other programs subject to this investigation.'' *See* the GOC's October 29, 2001, submission, of which a public version is on file in room B–099 of the Central Records Unit in the main Commerce Building. In addition, the October 10, 2001 certification supplied by Forest Renewal BC indicated that Sylvanex received zero benefits from Forest Renewal BC. The benefit that petitioner states that Sylvanex reported during the exclusion process resulted from the reporting, by Forest Renewal BC of sums provided to various associations within British Columbia. These amounts were allocated to members of the associations for purposes of the exclusion applications alone. In these expedited reviews, the participating companies have submitted program usage information based on their own financial records and experience. Under this approach, Sylvanex again has reported that it did not use the Forest Renewal Program during the POR. Given the difference in reporting methodologies between the two proceedings and the fact that Sylvanex based its questionnaire response on its own financial data, we find the discrepancy raised by petitioners is adequately explained and, thus, does not call into question the veracity of the information submitted by Sylvanex in these expedited reviews.

Comment 6: Tyee Timber Products Ltd. According to petitioners, Tyee Timber Products (Tyee) indicated in the exclusion process that they were affiliated with another company. However, petitioners point out that in these expedited reviews, Tyee does not indicate that they are affiliated with any company. Moreover, the total sales of subject merchandise reported in the exclusion proceeding differs from the total sales of subject merchandise reported in their expedited review application. Lastly, petitioners argue that in Tyee's expedited review application the company indicated that no logs were used or purchased, however, they report in another section of the application that the company used British Columbian timber as inputs.

Department's Position: As explained above, the exclusion process was a different segment of the proceeding from these expedited reviews, and we have clarified in our questionnaires how the sales data should be derived for purposes of our analysis as well as how to report data related to logs harvested and purchased. With respect to whether Tyee reported affiliates in its expedited review application, as explained above, the reporting methodologies used by participating companies differed between the exclusion process and the expedited review process. In the exclusion process, companies signed certifications regarding their affiliation and cross-ownership status that were based on questionnaires and guidelines compiled and issued by the GOC. *See* the GOC's October 29, 2001, submission. In contrast, in the expedited reviews, the Department has sent questionnaires directly to the participating companies that contain specific definitions and instructions regarding the issue of affiliation and cross-ownership. Therefore, it is entirely reasonable, since different authorities issued separate and different questionnaires, that some discrepancies would exist between the two proceedings. However, what is germane to the instant proceeding is what Tyee has stated regarding its affiliation and cross-ownership with other companies based on the definitions and instructions that were directly provided to it by the Department. On this point, Tyee has made clear in its application and questionnaire responses that it was not affiliated or cross-owned with any companies.

Comment 7: West Bay Forest Products and Manufacturing Ltd. Petitioners contend that West Bay Forest Products reported in the exclusion process different values for total sales of subject merchandise from the value they reported in their application for expedited review.

In response, West Bay Forest Products asserts that the financial information reported in their exclusion application reported total sales of all remanufactured softwood lumber. With respect to the expedited reviews, the company reported the combined total of remanufactured and resale sales amounts. Moreover, the company found an additional error in the total value of remanufactured sales reported in their original expedited review filing. In addition, the company provided a reconciliation of the difference between the figures in the two segments of the proceeding.

Department's Position: As explained above, we provided specific instructions on how to calculate sales figures in these expedited reviews. Therefore, the figures provided in the two segments of the proceeding are not directly comparable. Further, we find that the information submitted by West Bay Forest Products accounts for the differences in total sales values between the two segments of the proceeding.

Verification

In accordance with 782(I)(3) of the Act, we may verify information submitted by respondents who preliminarily received a *de minimis* subsidy rate, prior to making our final determination.

Preliminary Results of Reviews

In accordance with 19 CFR 351.221(b)(4)(I), we calculated an individual subsidy rate for each producer/exporter subject to these expedited reviews. For the period April 1, 2000, to March 31, 2001, we preliminarily determine the net subsidy to be as follows for Group 1 companies in Round 1:

Net subsidies—producer/exporter	Net subsidy rate %
Alexandre Cote Ltee	9.07
Boccam Inc	0.41
Byrnexco Inc	8.40
Davron Forest Products Ltd	10.94
Fraser Pacific Forest Products Inc	8.61
Frontier Mills Inc	8.61
Haida Forest Products Ltd	2.45
Landmark Truss & Lumber Inc	8.61
Les Bois S&P Grondin Inc	4.62
Les Industries P.F. Inc	8.03
Sechoirs de Beauce Inc	0.60
Tyee Timber Products Ltd	4.10
West Bay Forest Products and Manufacturing Ltd	5.50
West Can Rail Ltd	0.00

For the period April 1, 2000, to March 31, 2001, we preliminarily determine the net subsidy to be as follows for Group 1 companies in Round 2:

Net subsidies—producer/exporter	Net subsidy rate %
Central Cedar Ltd	4.96
Forstex Industries Inc	4.51
Hudson Mitchell & Sons Lumber Inc	4.31
Indian River Lumber	0.00
Les Scieries Jocelyn Lavoie Inc	0.00
Leslie Forest Products Ltd	13.72
Lyle Forest Products Ltd	3.37
Power Wood Corp.	6.73
Precision Moulding Products	1.41
Ram Co. Lumber Ltd	8.92
Rielly Industrial Lumber Inc	5.15
Sylvanex Lumber Products Inc	7.09
United Wood Frames Inc	10.69
Williamsburg Woods & Garden	11.95

If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct the BCBP to collect cash deposits of estimated countervailing duties in the amounts indicated above of the f.o.b. invoice price on all shipments of the subject merchandise produced and exported by the reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews. These rates will not apply to merchandise produced by the reviewed companies but exported by other entities.

Those producers/exporters whose final estimated net subsidy rate, based on verified information, is zero or *de minimis* will be excluded from the order. Because, in the Department's view, there is no relevant difference for purposes of the *de minimis* rule between expedited reviews of orders resulting from investigations conducted on an aggregate basis and expedited reviews of orders resulting from investigations conducted on a company-specific basis, we believe it is appropriate in these reviews to treat *de minimis* rates, one percent *ad valorem* in this case, in accordance with section 19 CFR 351.214(k)(3)(iv). Therefore, after the issuance of its final results, the Department intends to instruct BCBP to liquidate, without regard to countervailing duties, all outstanding shipments of the subject merchandise produced and exported by excluded companies.

These expedited reviews cover only those companies that we have specifically identified as qualifying for expedited reviews. The cash deposit rate for all other non-reviewed companies subject to the country-wide rate will be adjusted in the final results of the expedited reviews to account for the benefit and the sales values of the companies that have received company-specific rates. We will instruct the BCBP to collect cash deposits for all non-reviewed companies at the new cash deposit rates established in the final results of these reviews.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). The due dates for the case briefs will be announced at a later date.

Individuals who wish to request a hearing must submit a written request within 14 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The time, date, and place of the hearing will be announced after the Department has released the dates of the briefing schedule. However, any party that wants to participate in a hearing must submit a written request within the time period specified above.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, ten copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will include the results of its analysis of issues raised in any case or rebuttal briefs in the final results of these expedited reviews. The Department will ensure that interested parties are informed of the briefing schedule.

In the interests of giving each respondent an informed opportunity to request rescission of their expedited review, we have amended the timeline announced in the application form to request rescission of an expedited review. Requests of rescission must be received by the Department no later than 30 days after the date of publication of the preliminary results of the relevant expedited review.

These expedited reviews and notice are issued and published in accordance with section 751(a)(1) and 777(I)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677(f)(I)).

Dated: April 29, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–11353 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Approval Decision on American Samoa Coastal Nonpoint Pollution Control Program

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce, and the Environmental Protection Agency.

ACTION: Notice of intent to approve the American Samoa Coastal Nonpoint Program.

SUMMARY: Notice is hereby given of the intent to fully approve the American Samoa Coastal Nonpoint Pollution Control Program (coastal nonpoint program) and of the availability of the draft Approval Decisions on conditions for the American Samoa coastal nonpoint program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. section 1455b, requires States and Territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs. Coastal States and Territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. NOAA and EPA conditionally approved the American Samoa coastal nonpoint program on October 3, 1997. NOAA and EPA have drafted approval decisions describing how American Samoa has satisfied the conditions placed on its program and therefore has a fully approved coastal nonpoint program.

NOAA and EPA are making the draft decisions for American Samoa coastal nonpoint program available for a 30-day public comment period. If comments are received, NOAA and EPA will consider whether such comments are significant enough to affect the decision to fully approve the program.

Copies of the draft Approval Decisions can be found on the NOAA Web site at *http://www.ocrm.nos.noaa.gov/czm/* or may be obtained upon request from: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov.*

DATES: Individuals or organizations wishing to submit comments on the draft Approval Decisions should do so by June 9, 2003.

ADDRESSES: Comments should be made to: John King, Acting Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x188, e-mail *john.king@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov.*

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: May 5, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

G. Tracy Mehan III,

Assistant Administrator, Office of Water, Environmental Protection Agency.

[FR Doc. 03–11466 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Approval Decision on North Carolina Coastal Nonpoint Pollution Control Program.

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce and Environmental Protection Agency.

ACTION: Notice of intent to approve the North Carolina Coastal Nonpoint Program.

SUMMARY: Notice is hereby given of the intent to fully approve the North Carolina Coastal Nonpoint Pollution Control Program (coastal nonpoint program) and of the availability of the draft Approval Decisions on conditions for the North Carolina coastal nonpoint program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. section 1455b, requires States and Territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint program. Coastal States and Territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. NOAA and EPA conditionally approved the North Carolina coastal nonpoint program on February 23, 1998. NOAA and EPA have drafted approval decisions describing how North Carolina has satisfied the conditions placed on its program and therefore has a fully approved coastal nonpoint program.

NOAA and EPA are making the draft decisions for the North Carolina coastal nonpoint program available for a 30-day public comment period. If comments are received, NOAA and EPA will consider whether such comments are significant enough to affect the decision to fully approve the program.

Copies of the draft Approval Decisions can be found on the NOAA Web site at *http://www.ocrm.nos.noaa.gov/czm/* or may be obtained upon request from: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov.*

DATES: Individuals or organizations wishing to submit comments on the draft Approval Decisions should do so by June 9, 2003.

ADDRESSES: Comments should be made to: John King, Acting Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x188, e-mail *john.king@noaa.gov.;*

FOR FURTHER INFORMATION CONTACT: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov.*

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: May 5, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

G. Tracy Mehan III,

Assistant Administrator, Office of Water, Environmental Protection Agency.

[FR Doc. 03–11467 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050203D]

Marine Mammals; File No. 981–1707

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

ACTION: Notice of public meeting.

SUMMARY: NMFS will hold a public meeting regarding the scientific research proposed by Dr. Peter Tyack in a permit application and analyzed in a draft environmental assessment.

DATES: The meeting will be held on May 19, 2003, at 1 pm.

ADDRESSES: The meeting will be held at the NOAA Silver Spring Metro Center Complex, NOAA Science Center, 1301 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Steve Leathery, 301–713–2289.

SUPPLEMENTARY INFORMATION: On April 23, 2003, notice was published in the **Federal Register** (68 FR 19974) that a request for a scientific research permit to take various cetacean species, including endangered whales, in the North Atlantic (including the Gulf of Mexico) and Mediterranean Sea had been submitted by Dr. Peter Tyack (Biology Department, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts, 02453) and that a draft environmental assessment had been prepared on the proposed research. Comments on the application and/or the draft environmental assessment must be received by May 23, 2003. NMFS will hold a public meeting to inform interested parties of the proposed research and solicit comments on the application and accompanying draft environmental assessment.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Hubard, 301–713–2289 (voice) or 301–713–0376 (fax), at least five days before the scheduled meeting date.

Dated: May 5, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–11484 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Initial Patent Applications.

Form Number(s): PTO/SB/01/01A/02A/02B/02LR/03/03A/04/05/06/07/13PCT/16/17/18/19/29/29A/101 through 110/Electronic New Utility and Provisional Application Forms.

Agency Approval Number: 0651–0032.

Type of Request: Revision of a currently approved collection.

Burden: 4,171,568 hours annually.

Number of Respondents: 454,287 responses per year.

Avg. Hours Per Response: The USPTO estimates that it takes between 24 minutes to 10 hours and 45 minutes to gather the information, prepare, and submit the various paper and electronic applications in this collection, depending on the situation and the amount of information that needs to be submitted. Based on estimates of similar petitions, the USPTO believes that it takes 1 hour to gather the information, prepare, and submit the petitions to accept an unintentionally delayed priority claim and to accept non-signing inventors or legal representatives. The USPTO estimates that it takes 22 minutes to copy an oversized new original utility or provisional application that cannot be submitted electronically through EFS onto a CD–ROM, print the application transmittal, and prepare the cover letter submitting the submission.

Needs and Uses: This collection of information is required by 35 U.S.C. 131 and 37 CFR 1.16 through 1.84. An applicant must provide sufficient information to allow the USPTO to properly examine the application to determine whether it meets the requirements outlined in the patent statutes and regulations. The various fee and application transmittal forms, the declarations, the cover sheets, and the petitions permit applicants to supply all of the information necessary to process the application and enables the USPTO to ensure that all of the information has been provided in order to process the application. If an applicant tries to file a new utility or provisional application electronically through EFS and cannot submit it because the application exceeds 10 megabytes, the application can be copied onto a CD–ROM and submitted to the USPTO for examination.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, farms, the Federal Government, and State, Local, or Tribal Governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, Suite 310, 2231 Crystal Drive, Arlington, VA 22202; by phone at 703 308–7400; or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before June 9, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 1, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–11422 Filed 5–7–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of the forthcoming meeting of the 2003 S&T Review and the Director of Defense Research and Engineering. The purpose of the meeting is to allow the SAB leadership to advise the Director on the outcome of the 2003 Review. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: May 9, 2003.

ADDRESSES: Room 4E987, the Pentagon.

FOR FURTHER INFORMATION CONTACT: Lt. Col. John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–11396 Filed 5–7–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–90–001]

AES Ocean Express, L.L.C.; Notice of Site Visit

May 2, 2003.

On May 8–9, 2003, the Office of Energy Projects staff will participate in pre-certification inspection of AES Ocean Express, L.L.C.'s (Ocean Express) proposed pipeline route in and offshore Broward County, Florida. We will join personnel from the Florida Department of Environmental Protection, Broward County Department of Planning and Environmental Protection, U.S. Army Corps of Engineers, and the National Marine Fisheries Service, as well as representatives of Ocean Express.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11503 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–358–000]

ANR Pipeline Company; Notice of Revised Tariff Filing

May 2, 2003.

Take notice that on April 29, 2003, ANR Pipeline Company, (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets identified in Appendix A to the filing, with an effective date of June 1, 2003.

ANR states that the revised tariff sheets are being filed in order to provide additional flexibility to its existing firm hourly service, Rate Schedule FTS–3.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11509 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–359–000]

Canyon Creek Compression Company; Notice of Tariff Filing

May 2, 2003.

Take notice that on April 30, 2003, Canyon Creek Compression Company (Canyon) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Ninth Revised Sheet No. 6 and Original Sheet No. 6A, to be effective June 1, 2003.

Canyon states that the purpose of this filing is to make a periodic adjustment in Canyon's rates under its cost-of-service tracking mechanism. This filing represents the first tracking filing under section 37 of the General Terms and Conditions of Canyon's Tariff.

Canyon states that copies of the filing are being mailed to its customers and state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11510 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–084]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

May 2, 2003.

Take notice that on April 28, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction:

FTS–1 Service Agreement No. 75514 between Columbia Gulf Transmission Company and EnergyUSA–TPC dated April 28, 2003.

In addition, Columbia Gulf tendered for filing the following revised tariff sheet to its FERC Gas Tariff Second Revised Volume No. 1 with a proposed effective date of May 1, 2003:

Tenth Revised Sheet No. 316

Columbia Gulf states that transportation service is to commence May 1, 2003 and end May 31, 2003, under the agreement.

Columbia Gulf states that copies of the above-referenced filings have been served on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11516 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–389–085]

Columbia Gulf Transmission Company; Notice of Compliance Filing

May 2, 2003.

Take notice that on April 28, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Ninth Revised Sheet No. 316, to become effective April 17, 2003.

Columbia Gulf states that on March 26, 2003, it made a filing with the Commission seeking approval of a Rate Schedule FTS–1 negotiated rate agreement with CoEnergy Trading Company (CoEnergy) in Docket No. RP96–389–078. Columbia Gulf further states that on March 28, 2003, it made three similar filings with the Commission seeking approval of Rate Schedule FTS–1 negotiated rate agreements with Tenaska Marketing Ventures (Tenaska); EnergyUSA–TPC (EnergyUSA); and FPL Energy Power Marketing, Inc. (FPL) in Docket Nos. RP96–389–079, RP96–389–080, and RP96–389–081 respectively. Columbia Gulf adds that on April 1, 2003, it made a similar filing with the Commission seeking approval of a Rate Schedule PAL negotiated rate agreement with Petrocom Energy Group, Ltd. (Petrocom) in Docket No. RP96–389–082.

Columbia Gulf states that the Commission issued the following orders related to the filing mentioned above: on April 17, 2003, an order approving the CoEnergy Service Agreement effective April 1, 2003; on April 23, 2003, three separate orders approving the Tenaska, EnergyUSA, and FPL service agreements effective April 1, 2003; on April 22, 2003, an order approving the Petrocom service agreement effective May 1, 2003.

Columbia asserts that all five of the orders directed Columbia Gulf to file a tariff sheet identifying the agreements as non-conforming agreements in compliance with section 154.112(b) of the Commission's regulations. Columbia Gulf states that the instant filing is being made to comply with section 154.112(b) and to reference the non-conforming service agreements in its Volume No. 1 tariff.

Columbia Gulf further states that copies of its filing have been mailed to each of the parties listed on the service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11517 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–365–000]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2003).

Take notice that on April 30, 2003, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet proposed to become effective June 1, 2003:

Second Revised Sheet No. 4

Destin states that purpose of this filing is to revise its system map in accordance with the provisions of section 154.106 of the Commission's regulations.

Destin states that copies of this filing are being served on all affected shippers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the

Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11514 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–364–000]

Distrigas of Massachusetts LLC; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2003.

Take notice that on April 30, 2003, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERCGas Tariff, First Revised Volume No. 1, Fifteenth Revised Sheet No. 94, to become effective June 1, 2003.

DOMAC states that the purpose of this filing is to record semiannual changes in DOMAC's index of customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11513 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–366–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

May 2, 2003.

Take notice that on April 30, 2003, Great Lakes Gas Transmission Limited

Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective January 1, 2003:

Eighth Revised Sheet No. 3
Sixth Revised Sheet No. 3A
Seventh Revised Sheet No. 3B
Sixth Revised Sheet No. 3C

Great Lakes states that the tariff sheets listed above are being filed to revise the system and zone maps included in Great Lakes' tariff pursuant to section 154.106(c) of the Commission's regulations. The revisions reflect the removal of the Summerfield Meter Station from the eastern zone of Great Lakes' system, pursuant to the abandonment authorized in Docket No. CP02–49–000, and changes to certain pipeline company entity names that appear in the system and all zone map legends.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11515 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–119–000]

GridAmerica Companies; Notice of Initiation of Proceeding and Refund Effective Date

May 2, 2003.

Take notice that on April 30, 2003, the Commission issued an order in the above-indicated docket initiating a proceeding in Docket No. EL03–119–000 under Section 206 of the Federal Power Act.

The refund effective date in Docket No. EL03–119–000 will be 60 days after publication of this notice in the **Federal Register.**

Magalie R. Salas,

Secretary.

[FR Doc. 03–11504 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–384–003]

Islander East Pipeline Company, L.L.C.; Notice of Pro Forma Tariff Compliance Filing

May 2, 2003.

Take notice that on April 25, 2003, Islander East Pipeline Company, L.L.C. (Islander East) tendered for filing its Pro Forma FERC Gas Tariff, Volume No. 1.

Islander East states that it is filing its pro forma tariff to comply with the

December 21, 2001, September 19, 2002 and March 27, 2003 Commission Orders in Docket Nos. CP01–384, *et al.* Specifically, Islander East states that it has revised its pro forma tariff to comply with the Commission's Order No. 637 and Order Nos. 587–O and 587–R requirements. Islander East asserts that the proposed tariff also reflects minor tariff revisions for purposes of clarity.

Islander East states that complete copies of the filing are being mailed to customers and interested state commissions. Islander East further states that due to the voluminous nature of Appendices B (clean tariff) and C (redlined tariff), copies of this filing without Appendices B and C are being mailed to all other parties on the Commission's Official Service List in the above referenced docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11501 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–363–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

May 2, 2003.

Take notice that on April 30, 2003, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fifty Fourth Revised Sheet No. 9, to become effective May 1, 2003.

National states that under Article II, section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate semi-annually and monthly. Further, National states that it is required to charge the recalculated monthly rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under section 1 of Article II. National notes that the recalculation produced an IG rate of $1.15 per dth. In addition, National indicates that Article III, section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11512 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–085]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

May 2, 2003.

Take notice that on April 29, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 26W.07, to be effective May 1, 2003.

Natural states that the purpose of this filing is to implement a new negotiated rate transaction entered into by Natural and Reliant Energy Aurora, LP under Natural's Rate Schedule FTS pursuant to section 49 of the General Terms and Conditions of Natural's Tariff. Natural states that the negotiated rate agreement does not deviate in any material respect from the applicable form of service agreement in Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact

(202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11518 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–362–005]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

May 2, 2003.

Take notice that on April 29, 2003, PG&E Gas Transmission, Northwest Corporation (GTN), tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Fifth Revised Sheet No. 128, with an effective date of November 14, 2002.

GTN states that this tariff sheet is being submitted to comply with the Commission's April 14, 2003, Order on Rehearing, Clarification, and Compliance, in Docket Nos. RP02–362–003 and RP02–362–004. This proceeding involves proposed tariff changes by PG&E Gas Transmission, Northwest Corporation (GTN) that allow the pipeline to sell capacity on a pre-arranged basis.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11507 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–342–001]

Questar Pipeline Company; Notice of Tariff Filing

May 2, 2003.

Take notice that on April 29, 2003, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Second Revised Sheet No. 85 and Substitute Original Sheet No. 88C, to be effective May 12, 2003.

Questar states that this filing proposes to amend Questar's April 14, 2003, tariff filing (April 14 filing) that was filed to update Questar's Measurement section of its tariff to comport with current industry measurement standards and practices. Questar states that the proposed language in two sheets in that filing reflected an inadvertent deletion of portions of two NAESB Standards (2.3.9 and 2.3.14). With this filing, Questar seeks to amend the April 14 filing by reversing the NAESB Standards deletions.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11508 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–468–010, RP01–25–009, and RP03–175–004]

Texas Eastern Transmission, LP; Notice of Compliance Filing

May 2, 2003.

Take notice that on April 25, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets listed in Appendix A, attached to the filing, reflecting an effective date of April 1, 2003.

Texas Eastern states that the purpose of this filing is to supplement its March 25, 2003 tariff filing in compliance with the Commission's February 24, 2003, Order on Rehearing and Compliance Filings in Texas Eastern's Order No. 637 proceeding.

Texas Eastern states that copies of this filing have been mailed to all affected customers and interested state commissions, as well as to all parties on the service lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be

viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: May 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11506 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–362–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

May 2, 2003.

Take notice that on April 30, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective April 30, 2003:

Twelfth Revised Sheet No. 5
Tenth Revised Sheet No. 6
Tenth Revised Sheet No. 6A
Seventh Revised Sheet No. 7
Tenth Revised Sheet No. 8
Eleventh Revised Sheet No. 9

Williston Basin states that the revised tariff sheets are being filed simply to update its system maps through December 31, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11511 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–374–000]

Hackberry LNG Terminal, L.L.C.; List of Technical Conference Attendees

May 2, 2003.

On April 23, 2003, staff of the Office of Energy Projects convened a cryogenic design and technical conference concerning Hackberry LNG Terminal L.L.C.'s (Hackberry LNG) proposed liquefied natural gas import terminal and storage facility in Cameron Parish, Louisiana. The following parties attended:

Name/Representing

Arvedlund, Robert, FERC
Banchik, I.N., CH–IV International (Hackberry LNG)
Beppler, Laurie J., BP Energy Co.
Bowdoin, Jr, Leon A., Weaver's Cove Energy, LLC
Brouwer de Koning, Hector H., Black & Veatch Pritchard, Inc. (Hackberry LNG)
Busch, James G., BP Energy Co.
Comper, Geoffrey, Sempra Energy (HAckberry LNG)
Diemert, Michael, CH–IV International (Hackberry LNG)
Duncan, Rnady, Natural Resources Group (FERC)
Fernie, J.D., BG LNG Services, LLC
Floyd, Bradley, TRC Companies, Inc (Hackberry LNG)
Granger, E.D., Cheniere Energy, Inc.
Hand, Ron W., Hackberry LNG
Hatch, David, Hackberry LNG
Hope, David G., Skanska Whessoe (Hackberry LNG0
Isden, R.F., Skanska Whessoe (Hackberry LNG)
Johnson, Paul, Poten & Partners (HAckberry LNG)
Kelly, John, CMS Trunkline LNG Company, LLC
Kelly-Cochrane, Dale, Sempra Energy (Hackberry LNG)
Latham, Keith, Sempra Energy (Hackberry LNG)
Little, Keith, Conoco Inc.
Mash, Keith A., Skanska Whessoe (Hackberry LNG)
Mattson, Todd, Natural Resource Group, Inc. (FERC)
McCartney, Dan, Black & Veatch Pritchard, Inc (Hackberry LNG)
Morris, J.D., Hackberry LNG
Outtrim, Patricia, Project Technical Liaison Associates, Inc. (Hackberry (LNG)
Purcell, William Sempra Energy (Hackberry LNG)
Rose, Darren J., Skanska Whessoe (Hackberry LNG)
Stebbing, Roger, FERC
Terry, Sarah E., Conoco Inc.
Turpin, Terry, FERC
Zerby, Chris, FERC

Magalie R. Salas,

Secretary

[FR Doc. 03–11502 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

May 2, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–1960–002.

c. *Date filed:* February 19, 1999.

d. *Applicant:* Dairyland Power Cooperative—Wisconsin.

e. *Name of Project:* Flambeau Hydroelectric Station.

f. *Location:* On the Flambeau River in Rusk County, Wisconsin. The project does not utilize federal lands.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Dave Carroll, Coordinator, Dairyland Power Cooperative, 3200 East Avenue, South La Cross, WI 54601, (608) 788–4000.

i. *FERC Contact:* Timothy Konnert, Timothy.Konnert@ferc.gov, or (202) 502–6359.

j. Pursuant to Section 4.34(b) of the Commission's Regulations (*see* Order

No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991), the deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice. Reply comments are due 105 days from the issuance date of this notice.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

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 and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. 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 ''eFiling'' link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The project consists of the following existing facilities: (1) A right earthen dam, 2,570 feet-long and a left earthen dam 2,130 feet-long, separated by a 138 foot-long gated spillway section with a crest elevation of 1157.0 feet NGVD; (2) a 1,900-acre reservoir with a normal water surface elevation of 1183.48 feet NGVD; (3) a powerhouse containing 3 vertical Kaplan turbines each connected to generator units for a total installed capacity of 15,000 kW; and (4) appurtenant facilities. The average annual energy generation is 60,727,590 kWh. The dam and existing project facilities are owned by the applicant.

m. A copy of the application 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.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

n. *Procedures schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to the staff proposed alternative procedure, they should file comments as stipulated in item k above, briefly explaining the basis for their objection. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Issue Notice of availability of EA October 2003.

Ready for Commission decision on the application January 2004.

Magalie R. Salas,

Secretary.

[FR Doc. 03–11505 Filed 5–7–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0027, FRL–7496–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; State Water Quality Program Management Resource Analysis

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): State Water Quality Program Management Resource Analysis, ICR Number: 1945.02, OMB Control Number: 2040–0216, Current Expiration Date: September 30, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 7, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jane Ephremides, Resources Management and Evaluation Staff, Office of Wastewater Management, Office of Water, Mail Code: 4201M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0643; fax number: (202) 501–2399; email address: *ephremides.jane@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2003–0027, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the

Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by email to: *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Affected entities: Entities potentially affected by this action are State governments.

Title: State Water Quality Program Management Resource Analysis (OMB Control Number 2040–0216; EPA ICR Number 1945.02 expiring 09/30/2003.

Abstract: The Environmental Protection Agency (EPA), in partnership with States, is conducting the State Water Quality Management Resource Analysis (Gap Analysis) to help enumerate current and future funding needs and to help identify innovative strategies for reducing resource gaps. To gather preliminary information in a short time frame, the Gap Analysis was originally divided into two phases. Phase I consisted of the development of an initial, national estimate of the resource gap faced by water quality management programs to provide a general idea of the magnitude of the resource gap faced by States.

Phase II of the Gap Analysis involved developing a detailed, activity-based workload model to provide a common framework and consistent methodology for States and EPA to estimate the cost to the States to meet the objectives of the Clean Water Act (CWA) over the next five years. In order to complete the model, EPA's Office of Wastewater Management (OWM) gathered data from 21 States on current and future resources needed for water quality management activities.

Phase III of the Gap Analysis will build upon the information collected in Phase II, which used an estimate of current State expenditures on water quality activities. Under Phase III, States will complete a portion of the Phase II modules to update the needs numbers to reflect regulatory changes or changes to their programs. In addition, States will be asked to complete an activity-based model for current expenditures that mirrors the model for needs. This baseline spending data will allow the States and EPA to more accurately estimate the gap between expenditures and needed resources.

Phase III of the Gap Analysis is a one-time collection effort by OWM, and responses to this information collection request (ICR) are voluntary. The collection is necessary to develop an estimate of the gap in resources facing water quality management programs, both for individual States and the nation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

EPA is asking States to provide estimates of current spending and resource needs for water quality management program activities. EPA will provide the States with integrated modules (the Gap Analysis model) designed to capture current expenditures, current needs, and future needs to perform all activities associated with the development, planning, coordination, management, and implementation of State water quality management programs.

Each module contains lists of activities in each of the program areas. The modules will be integrated so that estimates for various program areas can be combined into a total estimate across all program areas.

To reduce the burden of the collection, the Gap Analysis model is designed to maximize State flexibility. It contains default values developed for the national estimate of the resource needs faced by State water quality management programs. Respondents can accept the default values or enter an appropriate value for their State. If the default value is altered, the change will cascade throughout the rest of the module.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The total number of respondents for this ICR is estimated to be twenty State agencies. The total number of responses for each respondent is one, which averages to 0.33 responses per respondent annually. EPA estimates the burden to be $1,893 and 61 hours per respondent for each respondent that chooses to submit information. For the three-year ICR period, the average annual respondent burden and cost to States and EPA is estimated at 1,353 hours and $46,068. The annual burden and cost to State governments is estimated at 1,207 hours and $37,648. No capital costs, recordkeeping burden, or operation and maintenance (O&M) costs are associated with this ICR.

State labor costs are estimated by applying an hourly labor rate to the burden hour estimates. For purposes of calculating State labor costs, EPA assumed a single average hourly wage rate of $31.20 per hour for all State activities, which is consistent with other recent OWM ICR submittals. This rate is based on the average hourly wage for State employees, as determined by the

U.S. Department of Labor, and includes benefits. As in previous ICRs, 50 percent overhead costs were added to the average State rate.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 1, 2003.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 03–11475 Filed 5–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0042–FRL–7495–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Requirements for Importation of Nonconforming Vehicles; Information Requirements for Importation of Nonconforming Nonroad Compression Ignition (CI) and Small Spark Ignition (SI) Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Requirements for Importation of Nonconforming Vehicles, OMB Control Number 2060–0095, expiration date 08/31/03; Information Requirements for Nonconforming Nonroad Compression Ignition (CI) and Small Spark Ignition (SI) Engines, OMB Control Number 2060–0294, expiration date 08/31/03. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 7, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mrs. Chestine Payton, Certification and Compliance Division, Outreach and Planning Group, 6405J, telephone (202) 564–9240, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telefax (202) 565–2057, and email *payton.chestine@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0042, which is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* You may use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by email to *air-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, OAR, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action include individuals and businesses (including Independent Commercial Importers) importing on and off-road motor vehicles, motor vehicle engines, or nonroad engines, including nonroad engines incorporated into nonroad equipment or nonroad vehicles.

Title: Information Requirements for Importation of Nonconforming Vehicles, OMB #2060–0095, expiring 08/31/03; Information Requirements for Nonconforming Nonroad Compression Ignition (CI) and Small Spark Ignition (SI) Engines, OMB #2060–0294, expiring 08/31/03.

Abstract: Individuals and businesses importing on and off-road motor vehicles, motor vehicle engines, or nonroad engines, including nonroad engines incorporated into nonroad equipment or nonroad vehicles report and keep records of vehicle importations, request prior approval for vehicle importations, or request final admission for vehicles conditionally imported into the U.S. The collection of this information is mandatory in order to ensure compliance of nonconforming vehicles with Federal emissions requirements. Joint EPA and Customs regulations at 40 CFR 85.1501 *et seq.*, 89.601 *et seq.*, 90.601 *et seq.*, and 19 CFR 12.73 and 12.74 promulgated under the authority of Clean Air Act sections 203 and 208 give authority for the collection of information. This authority was extended to nonroad engines under section 213(d). The information is used by program personnel to ensure that all Federal emission requirements concerning imported nonconforming motor vehicles and nonroad engines are met. Any information submitted to the Agency for which a claim of confidentiality is made is safeguarded according to policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see CFR part 2), and the public is not permitted access to information containing personal or organizational identifiers. An agency may not conduct or sponsor, and a person is not required

to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.7 hours per response (OMB #2060–0095), and 0.5 hours per response (OMB #2060–0294) respectively. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

OMB #2060–0095

Respondents/Affected entities: Individuals and businesses importing motor vehicles and motor vehicle engines.

Estimated Number of Respondents: 13,000.

Frequency of Response: 1.6 responses/year.

Estimated Total Annual Hour Burden: 15,800.

Estimated Total Annualized Costs Burden: $ 1,266,000.

OMB #2060–0294

Respondents/Affected entities: Individuals and businesses importing compression-ignition nonroad engines and small spark-ignition nonroad engines, including those incorporated into nonroad equipment or vehicles.

Estimated Number of Respondents: 1,500.

Frequency of Response: 100 responses/year.

Estimated Total Annual Hour Burden: 76,370.50.

Estimated Total Annualized Costs Burden: $ 93,765.00.

Dated: April 30, 2003.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 03–11477 Filed 5–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7495–7]

Protection of Stratospheric Ozone: Process for Exempting Critical Uses of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of solicitation of applications and information on alternatives.

SUMMARY: EPA is soliciting applications for the Critical Use Exemption from the phaseout of methyl bromide. This application process offers users of methyl bromide the opportunity to provide technical and economic information to support a ''critical use'' claim.

Methyl bromide is a chemical pesticide that has been identified under the *Montreal Protocol on Substances that Deplete the Ozone Layer* and the Clean Air Act, as an ozone-depleting substance. It is scheduled for complete phaseout by January 1, 2005. The Critical Use Exemption is designed to allow continued production and import of methyl bromide after the phaseout for those uses that have no technically and economically feasible alternatives. Because Critical Use Exemptions are exemptions from the January 1, 2005, methyl bromide phaseout, they will become effective after that date.

Applicants for the exemption are requested to submit technical and economic information to EPA for U.S. review. The U.S. will then create a national nomination for review by the Parties to the Montreal Protocol. EPA encourages users with similar circumstances of use to submit a single application. Please contact your state regulatory agency to receive information about their involvement in the process.

DATES: Applications for the Critical Use Exemption must be postmarked on or before August 6, 2003. The response period is now 90 days reflecting the clarifications and reduction of burden in the application.

ADDRESSES: Applications for the methyl bromide Critical Use Exemption should be submitted in duplicate (two copies) by mail to: U.S. Environmental Protection Agency, Office of Pesticide Programs, Biological and Economic Analysis Division, Attention Methyl Bromide Review Team, Mail Code 7503C, 1200 Pennsylvania Ave, NW., Washington, DC 20460 or by courier delivery (other than U.S. Post Office overnight) to: U.S. Environmental Protection Agency, Office of Pesticide Programs, Biological and Economic Analysis Division, Attention Methyl Bromide Review Team, Crystal Mall II, 1921 Jefferson Davis Highway, Arlington, VA 22202. Applicants are encouraged to send an electronic version of their application and/or attached documents along with their paper submission or sent via electronic mail to *bromide.methyl@epa.gov*.

FOR FURTHER INFORMATION CONTACT:

General Information: U.S. EPA Stratospheric Ozone Information Hotline, 1–800–296–1996.

Technical Information: Bill Chism, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503C), 1200 Pennsylvania Ave., NW., Washington, DC 20460, 703–308–8136.

Economic Information: David Widawsky, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503C), 1200 Pennsylvania Ave., NW., Washington, DC 20460, 703–308–8150.

Regulatory Information: Hodayah Finman, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202–564–2651.

SUPPLEMENTARY INFORMATION:

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C. How do I obtain an Application Form for the Methyl Bromide Critical Use Exemption?

D. What alternatives must applicants address when applying for a Critical Use Exemption?
E. What portions of the applications will be considered confidential business information?
F. Must I submit a ''Notice of Intent to Apply?''
G. What if I submit an incomplete application?
H. What if I already applied in 2002?
II. What is the legal authority for the Critical Use Exemption?
A. What is the Clean Air Act (CAA) authority for implementing the Critical Use Exemption to the methyl bromide phaseout?
B. What is the Montreal Protocol authority for granting a Critical Use Exemption after the methyl bromide phaseout?
III. How will the U.S. implement the Critical Use Exemption?
A. When will the exemption become available to U.S. users of methyl bromide?
B. What is the projected timeline for the Critical Use Exemption application process?

I. What Do I Need To Know To Respond To This Request for Applications?

A. Who Can Respond to this Request for Information?

The Application Form may be submitted either by a consortium representing multiple users or by individual users who anticipate needing methyl bromide in 2005 and believe there are no technically and economically feasible alternatives. EPA encourages users with similar circumstances of use to submit a single application (for example, any number of pre-plant users with similar soil, pest, and climactic conditions can join together to submit a single application). In some instances, State agencies will assist users with the application process (*see* discussion of voluntary State involvement in part I.B. below).

In addition to requesting information from applicants for the Critical Use Exemption, this solicitation for information provides an opportunity for any interested party to provide EPA with information on methyl bromide alternatives (*e.g.* technical and/or economic feasibility research). The Application Form for the methyl bromide Critical Use Exemption and other information on research relevant to alternatives must be sent to the addresses specified above.

B. Who Can I Contact To Find Out if a Consortium Is Submitting an Application Form for My Methyl Bromide Use?

Please contact your local, State, regional or national commodity association to find out if they plan on submitting an application on behalf of your commodity group.

Additionally, you should contact your State regulatory agency (generally this will be the State Department of Agriculture or State Environmental Protection Agency) to receive information about their involvement in the process. If your State agency has chosen to participate, EPA encourages all applicants to first submit their applications to the State regulatory agency, which will then forward them to EPA. The National Pesticide Information Center Web site is one resource available for identifying the lead pesticide agency in your State *(http://ace.orst.edu/info/npic/state1.htm)*.

C. How Do I Obtain an Application Form for the Methyl Bromide Critical Use Exemption?

An Application Form for the methyl bromide Critical Use Exemption can be obtained either in electronic or hard-copy form. EPA encourages use of the electronic form. Applications can be obtained in the following ways:

1. PDF format at EPA Web site: *www.epa.gov/ozone/mbr;*
2. Microsoft Excel and other electronic spreadsheet formats at EPA Web site: *www.epa.gov/ozone/mbr;*
3. Mailed hard-copy ordered through the Stratospheric Ozone Protection Hotline at 1–800–296–1996;
4. Hard-copy format at Air Docket No. OAR–A2000–24. The docket is located in room B–102, EPA West Building, U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Washington DC, 20460. The Docket Office is open from 8:30 a.m. until 4:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

D. What Alternatives Must Applicants Address When Applying for a Critical Use Exemption?

To support the assertion that a specific use of methyl bromide is ''critical,'' applicants are expected to demonstrate that there are no technically and economically feasible alternatives available to the user of methyl bromide. The Parties to the Montreal Protocol have developed an ''International Index'' of Methyl Bromide Alternatives which lists chemical and non-chemical alternatives, by crop (*http://www.epa.gov/ozone/mbr/alt_in.html*). The chemicals and non-chemical practices included on this index were identified by the international technical advisory groups under the Montreal Protocol: the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP). The MBTOC and the TEAP determined that alternatives in the International Index have the ''technical potential'' to replace methyl bromide in at least one circumstance of use on the identified crop (Report of the Technical and Economic Assessment Panel, 1997) (*http://www.teap.org/html/teap_reports.html*). A corresponding U.S. Index of Alternatives (also listed by crop) has been developed by the U.S. government regarding chemical alternatives (*http://www.epa.gov/ozone/mbr*). This U.S. Index reflects whether chemical alternatives included in the International Index have been registered for use in the United States.

Applicants must address technical, regulatory, and economic issues that limit the adoption of ''chemical alternatives'' and combinations of ''chemical'' and ''non-chemical alternatives'' listed for their crop within the ''U.S. Index'' of Methyl Bromide Alternatives. Applicants must also address technical, regulatory, and economic issues that limit the adoption of ''non-chemical alternatives'' and combinations of ''chemical'' and ''non-chemical alternatives'' listed for their crop in the ''International Index.''

E. What Portions of the Applications Will Be Considered Confidential Business Information?

The person submitting information to EPA in response to this notice may assert a business confidentiality claim covering part or all of the information by placing on (or attaching to) the application, at the time it is submitted to EPA, a cover sheet, or a stamped or typed legend placed at the front of the application, employing language such as trade secret, proprietary, or company confidential. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the applicant, and may be submitted separately to facilitate identification and handling by EPA. If the applicant desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth under 40 CFR part 2, subpart B; 41 FR 36902, 43 FR 40000, 50 FR 51661. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the applicant.

If you are asserting a business confidentiality claim covering part or all

of the information in the application, you must submit a non-confidential version that EPA can circulate to technical reviewers and can place in the public docket for reference by other interested parties. Under no circumstances shall the applicants claim confidentiality for the ''Worksheet Six: Application Summary'' portion of the application. These application information summary sheets will be posted on the EPA Web site (*www.epa.gov/ozone/mbr*) and included in Air Docket No. OAR-A2000–24. Please note, providing CBI may delay the ability of EPA to review your application.

F. Must I Submit a ''Notice of Intent To Apply?''

EPA requests that people who plan to submit an application send a ''notice of intent to apply'' to the location listed in **ADDRESSES** above. EPA asks that you submit the ''notice of intent to apply'' as soon as you decide if you will be applying in 2003, but no later than 30 days before the application deadline. The ''notice of intent to apply'' can be a simple letter (or an email in the form *LASTNAME.FIRSTNAME@epa.gov* to one of the people listed under the section **FOR FURTHER INFORMATION CONTACT**). The Agency is not requiring a ''notice of intent to apply'', but believes it will facilitate the organization of the application review process, and improve the U.S. government's ability to make arguments on behalf of sectors that demonstrate a critical need for methyl bromide.

G. What if I Submit an Incomplete Application?

If the EPA determines that an application is lacking sufficient information needed in order to be processed by the technical reviewers, applicants will be notified by telephone or in writing. If the required information is not submitted 30 days after the request, the application will not be processed. Reviewers may also call applicants for further elaboration about their application, even if it is complete.

H. What if I Already Applied in 2002?

The Parties to the Montreal Protocol will decide at the end of calendar year 2003 whether exemptions will be authorized for 2005 alone or for more than one year. If methyl bromide is only authorized by the Parties for 2005 alone, then EPA is requiring those who submitted applications in 2002 to provide updated data by filling out only those very limited portions of the application necessary to furnish any updated information to EPA. The data required for updating applications will be noted is the following:

- Provide the 2002 price of methyl bromide (worksheet 2D-amount and price of methyl bromide alone);
- Provide quantity of methyl bromide used in 2002 (worksheet 2B regarding 2002 information);
- Address the technical and economic feasibility of using newly registered alternatives (provide information in worksheets 3A through 3C regarding alternatives newly registered/available since submission of application during 2002);
- Update research information about alternatives (update worksheet 4 as necessary, based on new studies);
- Update details in research plan to identify and test alternatives (follow new format and provide details in worksheet 4, as necessary); and
- Provide update on new techniques to minimize emissions (worksheet 4).

II. What Is the Legal Authority for the Critical Use Exemption?

A. What Is the Clean Air Act (CAA) Authority for Implementing the Critical Use Exemption to the Methyl Bromide Phaseout?

In October 1998, the U.S. Congress amended the Clean Air Act by adding CAA sections 604(d)(6), 604(e)(3), and 604(h) (section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277; October 21, 1998)). The amendment requires EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the Montreal Protocol for industrialized countries. Specifically, the amendment requires EPA to make regulatory changes to implement the following phaseout schedule:

25% reduction (from 1991 baseline) in 1999;
50% reduction in 2001;
70% reduction in 2003;
100% reduction in 2005.

EPA published regulations in the **Federal Register** on June 1, 1999 (64 FR 29240), and November 28, 2000 (65 FR 70795), instituting the phaseout reductions in the production and import of methyl bromide in accordance with the schedule listed above. Additionally, the 1998 amendment allowed EPA to exempt the production and import of methyl bromide from the phaseout for critical uses starting January 1, 2005, ''to the extent consistent with the Montreal Protocol'' (section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998)(section 604(d)(6) of the Clean Air Act).

B. What Is the Montreal Protocol Authority for Granting a Critical Use Exemption After the Methyl Bromide Phaseout?

The Montreal Protocol provides an exemption to the phaseout of methyl bromide for critical uses in Article 2H, paragraph 5. The Parties to the Protocol included provisions for such an exemption in recognition that substitutes for methyl bromide may not be available by 2005 for certain uses of methyl bromide agreed by the Parties to be ''critical uses''.

In their Ninth Meeting (1997), the Parties to the Protocol agreed to Decision IX/6, setting forth the following criteria for a ''critical use'' determination:

(a) That a use of methyl bromide should qualify as ''critical'' only if the nominating Party [*e.g.* U.S.] determines that:

(i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and

(ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.

(b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if:

(i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;

(ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries need for methyl bromide;

(iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination * * * Non-Article 5 Parties [*e.g.*, the U.S.] must demonstrate that research programmes are in place to develop and deploy alternatives and substitutes. * * *

In the context of the phaseout program, the use of the term consumption may be misleading. Consumption does not mean the ''use'' of a controlled substance, but rather is defined as the formula: consumption = production + imports − exports, of controlled substances (Article 1 of the Protocol and section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under EPA's phaseout regulations, unless

otherwise precluded under separate regulations.

In addition to the language quoted above, the Parties further agreed to request the TEAP to review nominations and make recommendations for approval based on the criteria established in paragraphs (a)(ii) and (b) of Decision IX/6.

III. How Will the U.S. Implement the Critical Use Exemption?

A. When Will the Exemption Become Available to U.S. Users of Methyl Bromide?

Under the provisions of both the CAA and the Montreal Protocol, the Critical Use Exemption will be available to approved uses on January 1, 2005. Until that date, all production and import of methyl bromide (except for those quantities that qualify for the quarantine and preshipment exemption) must conform to the phasedown schedule listed above (*see* **SUPPLEMENTARY INFORMATION** section II A). For more information on the quarantine and preshipment exemption, please refer to 68 FR 238 (January 2, 2003).

B. What Is the Projected Timeline for the Critical Use Exemption Application Process?

There is both a domestic and international component to the Critical Use Exemption process. The following outline represents a projected timeline for the process:

May 8, 2003	Solicit applications for the methyl bromide Critical Use.
August 6, 2003	Deadline for submitting Critical Use Exemption applications to EPA.
Late 2003	U.S. government (EPA, Department of State, U.S. Department of Agriculture, and other interested federal agencies) create U.S. Critical Use nomination package.
January 31, 2004	Deadline for U.S. government to submit U.S. nomination package to the Protocol Parties.
Early 2004	Review of the nominations packages for Critical Use Exemptions by the Technical and Economic Assessment Panel (TEAP) and Methyl Bromide Technical Options Committee (MBTOC).
Early 2004	EPA publishes proposed rule for allocating Critical Use Exemptions in the U.S.
Mid 2004	Parties consider TEAP/MBTOC recommendations.
Late 2004	Parties authorize Critical Use Exemptions for methyl bromide.
Late 2004	EPA publishes final rule allocating Critical Use Exemptions in the U.S.
January 1, 2005	Critical Use Exemption permits the limited production and import of methyl bromide beyond the phaseout date for specific uses.

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Dated: April 30, 2003.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 03–11476 Filed 5–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0024; FRL–7308–3]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The June 3–5, 2003, Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) face-to-face meeting to review the effects of atrazine on amphibians has been rescheduled. Due to scheduling conflicts, the May 21st premeeting teleconference has been canceled. For further information, please notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT** or see the **Federal Register** of February 24, 2003 (68 FR 8593) (FRL–7291–9).

DATES: The new meeting date is June 17–20, 2003.

ADDRESSES: The meeting will be held at the Crowne Plaza Hotel, Washington - National Airport, 1489 Jefferson Davis Highway, Arlington, VA. The telephone number for the hotel is (703) 310–8980.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, DFO, Office of Science Coordination and Policy (7202M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail addresses: *lewis.paul@epa.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 30, 2003.

Joseph J. Merenda,

Director, Office of Science Coordination and Policy.

[FR Doc. 03–11479 Filed 5–7–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7494–7]

Proposed CERCLA Section 122(h) Administrative Agreement for Recovery of Past Costs for the Nelson Galvanizing Superfund Site, New York City, Queens County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region II, of a proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), with John T. Sweeney, Nelson Foundry, Inc. and Nelson Galvanizing, Inc., for recovery of past response costs concerning the Nelson Galvanizing Superfund Site (''Site'') located at 11–02 Broadway, in the Long Island City area of Queens County, New York City, New York. The settlement requires the settling parties to pay $244,000 in reimbursement of EPA's past costs at the Site. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), in exchange for their payment of monies. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments

received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before June 9, 2003.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Nelson Galvanizing Superfund Site, 11–02 Broadway, New York City, New York, Index No. CERCLA–02–2003–2011. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Michael A. Mintzer, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York 10007–1866. Telephone: 212–637–3168.

Dated: April 22, 2003.

William McCabe,

Acting Director, Emergency and Remedial Response Division, Environmental Protection Agency, Region 2.

[FR Doc. 03–11474 Filed 5–7–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, May 6, 2003, meeting closed to the public. This meeting was rescheduled for Monday, May 5, 2003.

DATE AND TIME: Tuesday, May 13, 2003 at 10 a.m.

PLACE: 999 E Street, N.W., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal Personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–11675 Filed 5–6–03; 3:12 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; and Board of Governors of the Federal Reserve System (Board).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC and the Board (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment to extend, without revision, the following currently approved information collection titled,''Foreign Branch Report of Condition (FFIEC 030).'' At the end of the comment period, the comments and recommendations received will be analyzed to determine whether the FFIEC and the agencies should modify the information collection. The agencies will then submit the report to OMB for review and approval. The Federal Deposit Insurance Corporation, also a member of the FFIEC, concurs with this proposal to extend without revision as noted in a separate Federal Register notice (68 FR 19452) published April 21, 2003.

DATES: Comments must be submitted on or before July 7, 2003.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments should refer to the OMB control number(s) and will be shared among the agencies.

OCC: Comments should be sent to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: 1557–0099, 250 E Street, S.W., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e–mail. Comments may be sent by fax to (202) 874–4448, or by e–mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, S.W., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: Written comments, which should refer to ''Foreign Branch Report of Condition, 7100–0071,'' may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202–452– 3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to jlackeyj@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from:

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

Board: Cynthia M. Ayouch, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

Proposal to Extend For Three Years Without Revision the Following Currently Approved Information Collection:

Title: Foreign Branch Report of Condition

Form Number: FFIEC 030

Frequency of Response: Annually, and quarterly for significant branches

Affected Public: Business or other for–profit

For OCC:

OMB Number: 1557–0099

Number of Respondents: 143 annual respondents; 56 quarterly respondents

Estimated Time per Response: 3.9 burden hours.

Estimated Total Annual Burden: 1431 burden hours.

For Board:

OMB Number: 7100–0071

Number of Respondents: 40 annual respondents; 26 quarterly respondents

Estimated Time per Response: 3.9 burden hours.

Estimated Total Annual Burden: 468 burden hours.

General Description of Report

*These information collections are mandatory:*12 U.S.C. 321, 324, and 602 (Board); 12 U.S.C. 602 (OCC). These information collections are given confidential treatment (5 U.S.C. 552 (b)(8)).

Small businesses (that is, small banks) are not affected.

Abstract

This report contains asset and liability information for foreign branches of insured U.S. commercial banks and is required for regulatory and supervisory purposes. The information is used to analyze the foreign operations of U.S. commercial banks. All foreign branches of U.S. banks, regardless of charter type, file this report with the appropriate Federal Reserve District Bank. The Federal Reserve collects this information on behalf of the U.S. bank's primary federal bank regulatory agency.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, includingthrough 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.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: April 29, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division,Office of the Comptroller of the Currency

Board of Governors of the Federal Reserve System, May 2, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–11426 Filed 5–7–03; 8:45 am]

BILLING CODE 6720–01–P 1/2; 6210–01–P 1/2

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 22, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Shuratt Whitworth, Lavonia, Georgia; Rachel M.Whitworth, Lavonia, Georgia; Mary Patsy Gilbert, Lavonia, Georgia; W.M. Gilbert, Lavonia, Georgia; Cynthia D. Gilbert, Lavonia, Georgia; Tracie G. Dowis, Lexington, South Carolina; Grant Michael Dowis, Lexington, South Carolina; Madeline Grace Dowis, Lexington, South Carolina; Brady Williams, Franklin, Tennessee; Tammy G. Williams, Franklin, Tennessee; Christopher C. Whitworth, Hartwell, Georgia; Franklin Shuratt Whitworth, Hartwell, Georgia; Randy S. Whitworth, Hartwell, Georgia; Caroline Louise Kelly, Monroe, Georgia; Leigh W. Kelly, Monroe, Georgia; Matthew Thomas Kelly, Monroe, Georgia; Wesley William Kelly, Monroe, Georgia; Wendy Whitworth, Lilburn, Georgia; Barry S. Whitworth, Toccoa, Georgia; Sarah Elizabeth Whitworth, Toccoa, Georgia; Steven Jarrett Whitworth, Toccoa, Georgia; The H. W. Whitworth Irrevocable Trust, Mary Patsy Gilbert, Trustee, Lavonia, Georgia; The H. W. Whitworth Irrevocable Trust, Shuratt Whitworth, Trustee, Lavonia, Georgia; Whitworth Family Partnership II, Shuratt Whitworth, General Partner, Lavonia, Georgia; and the Whitworth Family Partnership III, Mary Patsy Gilbert, General Partner, Lavonia, Georgia; to retain voting shares of First Security Bankshares, Inc., and thereby indirectly retain voting shares of Northeast Georgia Bank, both of Lavonia, Georgia.

Board of Governors of the Federal Reserve System, May 2, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–11425 Filed 5–7–03; 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 website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than June 2, 2003.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Citizens Financial Group, Inc., Providence, Rhode Island; Royal Bank of Scotland, PLC, Theedinburgh; Royal Bank of Scotland Group PLC, Theedinburgh; and RBSG International Holdings Limited, Edinburgh, all in Scotland; to acquire 100 percent of the voting shares of Port Financial Corp., Brighton, Massachusetts, and its subsidiary, Cambridge Bank, Cambridge, Massachusetts, and to acquire up to 9.9 percent of the voting shares of Cambridge Bancorp, Cambridge, Massachusetts, and thereby indirectly acquire voting shares of Cambridge Trust Company, Cambridge, Massachusetts.

Board of Governors of the Federal Reserve System, May 2, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–11424 Filed 5–7–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY: Board of Governors of the Federal Reserve System.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 2137, April 30, 2003.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 12 noon, Monday, May 5, 2003.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Discussion of classified security matter.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 5, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–11519 Filed 5–5–03; 4:01 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. R–1149]

Rules of Organization

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Amendment to rules of organization.

SUMMARY: The Board of Governors has revised its definition of a quorum of the Board and incorporated the new quorum provision into the Board's Rules of Organization. The amendment is designed to enhance the Board's ability to perform its functions in the event of a national emergency, and would not alter the number of Board members required to constitute a quorum in normal operating environments.

DATES: The amendment to the Rules of Organization became effective on April 29, 2003.

FOR FURTHER INFORMATION CONTACT: Kieran J. Fallon, Senior Counsel (202–452–5270), or Audrey G. Decker, Attorney (202–452–3099), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Users of Telecommunication Device for Deaf (TDD) only, call 202–263–4869.

SUPPLEMENTARY INFORMATION: The Board of Governors of the Federal Reserve System (Board) consists of seven members appointed by the President, by and with the advice and consent of the Senate, as provided in the Federal Reserve Act (Act).[1] The Act does not define a quorum of the Board, and authorizes the Board to make all rules and regulations necessary to enable the Board effectively to perform its duties and functions.[2] Since 1913, the Board itself has defined a quorum of the Board to be a majority (four members) of its authorized strength of seven members.

The Board's current practice could prevent the Board from taking action if an act of war, terrorist attack or other catastrophic event reduced the Board's membership to fewer than four members. The Board's current practice also could prevent a four–member Board from taking prompt action during an emergency if one member were unable to establish contact with the Board. In light of these possibilities, the Board has amended its definition of a quorum to provide that a majority of the members in office constitutes a quorum of the Board, *unless* there are five members in office, in which case four members will constitute a quorum of the Board.

The Board believes that the revised definition of a quorum will enhance the Board's ability to fulfill its important statutory responsibilities in an emergency. At the same time, the revised definition would *not* alter the number of Board members required to constitute a quorum or the functioning of the Board's committee structure in normal operating environments (that is, when five or more members are in office). In this regard, the revised definition would continue to require that four members of the Board participate in an action for a quorum to exist whenever the Board has five or more members in office.[3]

The Board has incorporated its new definition of a quorum into the Board's Rules of Organization. The Board's Rules of Organization are uncodified regulations for use within the Federal Reserve System, issued pursuant to 5 U.S.C. 552. The Rules of Organization were published in the Federal Register on July 19, 2001 (66 FR 37687). The amendment relates solely to the internal procedure of the Board, and, accordingly, the public notice, public comment and delayed effective date provisions of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b) and (d). Because public notice and comment is not required, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) also does not apply to this action.

For the reasons discussed above, the Board of Governors of the Federal Reserve System has amended section 2 of its Rules of Organization by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding the following new paragraph (b):

Section 2–Composition, Location, and Public Information

* * * * *

(b) *Quorum.* A majority of the members in office constitutes a quorum of the Board for purposes of transacting business *except* that, if there are five members in office, then four members constitute a quorum.

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 2, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–11427 Filed 5–7–03; 8:45 am]

BILLING CODE 6210–01–S

[1] *See* 12 U.S.C. 241.

[2] *See* 12 U.S.C. 248(i)

[3] Since the current structure of the Board was established in 1936, the Board has not had fewer than five members in office at any one time.

OFFICE OF GOVERNMENT ETHICS

Privacy Act of 1974; Systems of Records Notice; Correction

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of proposed new and revised systems of records; correction.

SUMMARY: In this document, OGE is correcting several minor errors under certain headings of the Notice of Proposed New and Revised Systems of Records, which was published by OGE in the **Federal Register** on Wednesday, January 22, 2003 and will become effective on May 22, 2003.

DATES: These corrections to the proposed new and revised systems of records will become effective on May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Elaine Newton, Attorney-Advisor, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; Telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: As set forth below in this document, OGE is correcting several minor errors in the Notice of Proposed New and Revised Systems of Records document, which OGE published on January 22, 2003 at 68 FR 3098–3109 (as separate part II), with comments requested by March 24, 2003. OGE did not receive any comments; thus, as indicated in the notice, the proposed new and revised systems of records, as corrected in this document, will become effective on May 22, 2003.

Approved: April 30, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

As indicated in the preamble, the Office of Government Ethics, is correcting the January 22, 2003 publication of the Notice of Proposed New and Revised Systems of Records, which was the subject of FR Doc. 03–1101, as follows:

OGE/GOVT–1 [Corrected]

1. On page 3099, in the third column, the second sentence of the text under the heading ''CATEGORIES OF RECORDS IN THE SYSTEM:'' is corrected by removing the word ''of'' between the words ''Ethics and ''Government'' and by adding in its place the word ''in''.

2. On page 3100, in the first column, the text under the heading ''PURPOSE(S):'' is corrected by removing the words ''and E.O.'' and by adding in their place the words ''Executive Order'', and by adding a comma followed by the words ''and OGE and agency regulations thereunder'' after the word ''modified''.

3. On page 3100, in the second column, routine use (c) is corrected by removing the word ''OGE'' and by adding in its place the words ''the disclosing agency''.

OGE/GOVT–2 [Corrected]

4. On page 3101, in the third column, the text under the heading ''PURPOSE(S):'' is corrected by removing the word ''Orders'' and by adding in its place the word ''Order''.

5. On page 3102, in the first column, routine use (a) is corrected by removing the word ''OGE'' and by adding in its place the words ''the disclosing agency''.

6. On page 3102, in the first column, routine use (b) is corrected by adding the word ''a'' between the words ''is'' and ''party''.

7. On page 3102, in the second column, the text of the Note is corrected by adding a comma between the words ''laws'' and ''Executive''.

OGE/INTERNAL–1 [Corrected]

8. On page 3103, in the first column, the second sentence of the text under the heading ''CATEGORIES OF RECORDS IN THE SYSTEM:'' is corrected by adding the word ''Employees'' between the words ''Federal'' and ''Retirement''.

OGE/INTERNAL–5 [Corrected]

9. On page 3108, in the third column, the first sentence of the text under the heading ''CATEGORIES OF RECORDS IN THE SYSTEM:'' is corrected by inserting a comma after the word ''location'', by removing the word ''and'', and by adding the words ''and hours of duty'' between the words ''extension'' and ''of''.

[FR Doc. 03–11416 Filed 5–7–03; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations.

Time and Date: 8:30 a.m. to 5:30 p.m., May 22, 2003; 8:30 a.m. to 5:30 p.m., May 23, 2003.

Place: J.D. Morgan Athletics Center, The Press Room, UCLA Athletics, 325 Westwood Plaza, Los Angeles, CA 90095.

Status: Open.

Purpose: The Subcommittee on Populations. NCVHS, is holding a hearing to discuss issues relating to statistics for the determination of health disparities in racial and ethnic populations. The focus will be on issues related to the collection and use of data on race and ethnicity for Asian American, Native Hawaiian, and Pacific Islander populations. Invited panelists will address methodologic issues (*e.g.,* misclassification, small area analysis, confidentiality concerns) on the collection of data on race and ethnicity, use of mixed race data, language issues, measurement of ethnic identity, and perspectives on variables beyond race and ethnicity needed to determine health disparities in racial and ethnic groups.

FOR FURTHER INFORMATION CONTACT: Additional information about this meeting as well as summaries of past meetings and a roster of committee members may be obtained from Audrey L. Burwell, Office of Minority Health, 1101 Wooton Parkway, 6th Floor, Room 600, Rockville, Maryland 20852, telephone: (301) 443–9923, e-mail *alburwell@osophs.dhhs.gov;* or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 2413, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda and more details about participation in the meeting or Subcommittee deliberations will be posted when available.

Dated: May 1, 2003.

James Scanlon,

Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–11407 Filed 5–07–03; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–66]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the

Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Environmental Health Specialists Network (EHS–NET) Data Collection Methodology and Instrument—New—National Centers for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

The Centers for Disease Control and Prevention (CDC) is requesting OMB approval for a data collection system that will assist public health officials to better identify and assess environmental factors contributing to foodborne outbreaks and the prevention efforts needed to reduce or ameliorate these events. This data collection, the Environmental Health Specialists Network (EHS-Net) Information System, is a standardized survey instrument developed by CDC in collaboration with the U.S. Food and Drug Administration (FDA) and the EHS-Net participating states, California, Colorado, Connecticut, Georgia, Minnesota, New York, Oregon, and Tennessee. The instrument is for use in non-regulatory environmental evaluations.

The Environmental Health Specialist Network Information System has been pilot tested in the EHS-Net states. The eight states in the pilot testing phase used the EHS-Net survey instrument to collect environmental information from two groups of restaurants: those that reported foodborne outbreaks and those that had not. The survey instrument collected information about the restaurant's food safety policies and procedures, and includes direct observations of food preparation and handling practices, and food worker behaviors.

CDC will evaluate the data collected in these eight pilot states to further refine and improve the EHS-Net data collection instrument and methodology. Once this evaluation is completed, the EHS-Net data collection instrument and methodology will be made available to all public health officials in the United States who wish to use the system to identify and assess environmental factors in food establishments that contribute to foodborne illness and to evaluate the effectiveness of existing prevention measures including foodhandling practices, policies, and other control measures. There is no cost to respondents.

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
One Public Health Official Per State	50	52	6	15,600
Total				15,600

Dated: May 2, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–11418 Filed 5–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–65]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Pilot Study for the National Survey of the Mining Population—NEW—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Surveillance of occupational injuries, illnesses, and exposures has been an integral part of the work of the National Institute for Occupational Safety and Health (NIOSH) since its creation by the Occupational Safety and Health Act in 1970. To improve its surveillance capability related to the occupational risks in mining, NIOSH is planning to conduct a national survey of mines and mine employees. No national surveys have specifically targeted the mining labor force since the 1986 Mining Industry Population Survey (MIPS). The mining industry has experienced many changes in the last 17 years; consequently, the MIPS data are no

longer representative of the current mining industry labor force.

The proposed survey will be based upon a probability sample of mining operations and their employees. The major objectives of the survey will be: (1) To collect basic information about the mining operation; (2) to establish the demographic and occupational characteristics of mine operator employees within each major mining sector (coal, metal, nonmetal, stone, and sand and gravel); and (3) to determine the number and occupational characteristics of independent contractor employees within mines. The sampled mining operations will provide all survey data; individual operator and independent contractor employees will not be directly surveyed. As a result of this survey, surveillance researchers and government agencies such as the Mine Safety and Health Administration (MSHA) will be able to identify groups of miners with a disproportionately high risk of injury or illness. By capturing demographic (*e.g.*, age, gender, race/ethnicity, education level) and occupational characteristics (*e.g.*, job, title, work location, experience in this job title, total mining experience) of the mining workforce, these data will be of use in the customization of interventions such as safety training programs.

Prior to implementing the full-scale survey, NIOSH is planning to conduct a Pilot Study to evaluate the effectiveness of the survey recruitment materials, questionnaires, and procedures in the acquisition of complete and high quality data from a sample of mining operations. Data captured in the Pilot Study will guide improvements to optimize the performance of the various components of the full-scale national survey. Approximately 40 randomly selected mining operations spanning the five major mining commodities will be chosen for the Pilot Study. A survey packet will be sent to each sampled mining operation. It is expected that approximately 30 mining operations will be eligible to participate in and will respond to the Pilot Study. A portion of the survey responders and all non-responders will be asked a short number of debriefing questions by telephone. There will be no cost to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Mining Operations Participating in Pilot Study	30	1	90/60	45
Mining Operations Responding to Debriefing Questions	23	1	5/60	2
Total				47

Dated: May 1, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–11419 Filed 5–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel: Research on the Impact of Law on Public Health, Program Announcement #03049

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Research on the Impact of Law on Public Health, Program Announcement #03049.

Times and Dates: 3 p.m.–3:30 p.m., May 27, 2003 (Open). 3:30 p.m.–7 p.m., May 27, 2003 (Closed). 8 a.m.–5 p.m., May 28, 2003 (Closed). 8 a.m.–5 p.m., May 29, 2003 (Closed). 8 a.m.–5 p.m., May 30, 2003 (Closed).

Place: Marriott Perimeter Center, 246 Perimeter Center Parkway, NE, Atlanta, GA 30346, 770.270.0422.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of Letters of Intent received in response to Program Announcement # 03049.

CONTACT PERSON FOR MORE INFORMATION: Joan Karr, Ph.D., Scientific Review Administrator, Public Health Program Practice Office, CDC, 4770 Buford Highway, NE., MS–K–38, Atlanta, GA 30341, Telephone 770.488.2597.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 2, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–11421 Filed 5–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Nursing Recruitment Program for American Indians/Alaska Natives

AGENCY: Indian Health Services (IHS), HHS.

ACTION: Notice of availability of funds for the Nursing Recruitment Program for American Indian/Alaska Natives (AI/AN).

SUMMARY: The IHS announces that competitive grant applications are now being accepted for the Nursing Education Program for AI/AN authorized by section 112 of the Indian Health Care Improvement Act Public Law 94–437, as amended. There will be only one funding cycle during Fiscal Year (FY) 2003. This program is described at 93.970 in the Catalog of Federal Domestic Assistance. Costs will be determined in accordance with applicable OMB Circulars and 45 CFR Part 74 or 45 CFR Part 92 (as applicable). Executive Order 12372 requiring intergovernmental review does not apply to this program. This program is not subject to the Public Health System Reporting Requirements.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010,* a

PHS-led activity for setting priority areas. This program announcement is related to the priority area of Educational and Community-based programs. You may obtain the objectives from the latest *Healthy People 2010,* Review. A copy may be obtained by calling the national Center for Health Statistics, telephone (301) 436–8500.

Smoke Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

DATES: *Application Receipt Date:* An original and two copies of the completed grant application must be submitted, with all required documents, to the grants Management Branch, Division of Acquisitions and Grants Operations, 801 Thompson Avenue, Rockville, MD 20852, by close of business (c.o.b.) June 17, 2003. COB means 5 p.m. Eastern Daylight Time. Applications shall be considered as meeting the deadline if they are either: (1) received on or before the deadline with hand carried applications received by close of business 5 p.m.; or (2) postmarked on or before the deadline date and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications will be returned to the applicant and will not be considered for funding.

Additional Dates

(a) *Application Review Completed By:* July 26, 2003.

(b) *Applicants Notified of Results (approved, approved unfunded, or disapproved):* July 31, 2003.

(c) *Anticipated Start Date:* August 1, 2003.

FOR FURTHER INFORMATION CONTACT: For program information, contact Celissa G. Stephens, MSN, Acting Director, Division of Nursing Services, Office of Clinical and Preventative Services, Indian Health Service, 801 Thompson Avenue, Reyes Building, Suite 300, Rockville, MD 20852, (301) 443–1840. For grants information, contact Ms. Martha Redhouse, Grants Management Specialist, grants Management Branch, Division of Acquisition and Grants Management, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, MD 20852, (301) 443–5204. (The telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose and objectives, programmatic priorities, eligibility requirements, funding availability, application process, required documentation, review process, and review criteria.

(a) *General Program Purpose:* To increase the number of nurses, nurse practitioners, nurse anesthetists, and nurse midwives who deliver health care service to AI/AN.

(b) *Eligibility and Preference:* The following organizations are eligible: (1) Public or private schools of nursing; (2) Tribally controlled community colleges and Tribally controlled posts-secondary vocational institutions (as defined in section 239h (2) of Title 20); and (3) nurse midwife programs, and nurse practitioner programs, that are provided by public or private institutions, for the purpose of increasing the number of nurse midwives, nurse practitioners, and nurses who deliver care to AI/AN's.

Preference will be given to programs which: (1) Provide a preference to AI/AN; (2) programs that train nurse midwives and nurse practitioners; (3) programs that are interdisciplinary; and (4) programs that are conducted in cooperation with the center for gifted and talented Indian students established under section 2624(a) of this Title 1616e(d). If an eligible organization claims preference in order to be given priority, the organization must submit verifying documentation.

(c) *Program Priorities:* All complete, eligible applications will be considered. If more than one application is received from an IHS Area only one award will be made to that particular area providing a MSN, BSN, ADN or LPN program.

Priority I—At least one project to a public or private college or university, school of nursing, which provides MSN (nurse midwife, nurse practitioner, or nurse anesthetist) degrees not to exceed $350,000 per year up to project period of five years.

Priority II—At least three projects to a public or private college or university, school of nursing which provides BSN or ADN degrees, not to exceed $400,000 per year up to a project period of five years.

Priority III—At least one project to a Tribally controlled community college, school of nursing, which provides LPN training, not to exceed $200,000 per year up to a project period of five years.

(d) *Program Objectives:* The primary objectives of a grant awarded under this program are to: (1) Recruit and train AI/AN individuals to be nurses (MSN, BSN, ADN, LPN); (2) provide scholarships to individuals enrolled in schools of nursing to pay tuition, books, fees, and stipends for living expenses; (3) provide a program that encourages nurses (MSN, BSN, ADN or LPN), to provide or continue to provide, health care services to AI/AN; and (4) provide a program that increases the skills of and provides continuing education to nurses (MSN, BSN, ADN, LPN).

Each proposal must respond to at least two of the above four objectives.

(e) *Program Activities Considered for Support:* The grant program must be developed to locate and recruit students with potential for nursing and provide support services to students who are recruited. Support services may include providing career counseling and academic advice; assistant students to identify academic deficiencies and to develop plans to correct those deficiencies; assisting students to locate financial aid; monitoring students to identify possible problems; assisting with the determination of need for and location of tutorial services; and other related activities which help to retain students in school.

(f) *Required Affiliation:* The applicant must submit documentation that it is an accredited school of nursing, or a Tribally controlled community college. The term ''accredited'' when applied to any program of nurse education means a program accredited or assured accreditation by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education and when applied to a school, college or university (or a unit thereof) which is accredited by a recognized body or bodies, or a State agency, approved for such purpose by the Secretary of Education. In order to establish the connection between the program of the applicant and a health care facility that primarily serves Indians the Secretary requires and information regarding the accessibility of the application to target Indian communities or tribes, including evidence of past or potential cooperation between the application of such communities or Tribes. When the target population of a proposed project includes a particular Indian Tribe or Tribes, an official document, *i.e.,* a letter of support or tribal resolution, must be submitted indicating that the Tribe or Tribes will cooperate with the applicant.

Related objectives of the program are the proper administration of a project,

selection of scholarship recipients by fair and consistent means, monitoring of recipients to assure compliance with scholarship requirements and eventual job placement within the service area of the grantee to fulfill service obligation. A student must serve one year for every year funded. One of the monitoring objectives in assuring satisfactory academic performance which is defined as: (1) A 2.50 grade point average (GPA); and (2) the GPA required by the college/university.

(g) *Fund Availability:* Approximately $1.7 million is available per year, for a five year cycle. The anticipated start date for selected projects will be August 1, 2003. A total of five projects will be awarded with funding for succeeding years based on satisfactory level of performance; the availability of appropriation in future years; and the continuing need of IHS for the project. Funding will be available to fund only one project (MSN, BSN, ADN, LPN) grant within an IHS Area.

(h) *Period of Support:* Projects will be funded with annual budget periods and project periods of five years. The second, third, fourth and fifth year funding will be based on the following: (1) Satisfactory progress of the grantee; (2) availability of funds; and (3) continuing need of the IHS or the program.

(i) *Application Process:*

(1) An IHS Recruitment Grant Application Kit may be obtained from the Grants Management Branch, Division of Acquisition and Grants Management, Indian Health Service, 801 Thompson Avenue, Reyes Building, Rockville, MD 20852, (301) 443–5204. This kit includes Standard Form PHS 5161–1 (Rev. 7/00); Standard Forms 424, 424A, and 424B (Rev. 7/97); Application Receipt Card—PHS 3038–1 (Rev. 4/97); instructions for preparing the program narrative; IHS Application Check List; a copy of the **Federal Register** Notice for Nursing Recruitment Grants; and a copy of Section 112 of the Act.

(2) The application must be signed and submitted by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award.

(3) The available funding level is inclusive of both direct and indirect costs. Because this project is for a training grant, the Department of Health and Human Services' policy limiting reimbursement of indirect cost to 8 percent of total direct costs (exclusive of trainee costs and expenditures for equipment) is applicable. This limitation applies to all institutions of higher education other than agencies of State and local government.

(4) Each application will be reviewed by the Grants Management Branch for eligibility, compliance with the announcement, and completeness. All acceptable applications will be subject to a competitive objective review and evaluation. An unacceptable application will be returned to the applicant without further consideration.

(5) Applicants will be notified by July 31, 2003, of their status as approved, approved unfunded, or disapproved.

(6) The project period may not exceed five years. Applications must include Narrative and Budget information for the entire anticipated project period. The application must comply with the following format:

(a) Table of Contents (one page)

(b) Narrative (up to five pages)

(c) Budget and Justification

(d) Appendix (Tribal resolution, verification of accreditation, résumé's and position descriptions of staff who will administer the program, an organizational chart of placement of the administrative staff within the Tribes or Tribal organization, and supporting documentation.

(j) *Narrative:* The following instructions for the preparation of the narrative are to be used in lieu of the instructions on pages 21–23 of form PHS 5161–1. The narrative section of the application must include: (1) Description of administration of the grant; (2) description of applicant's previous experience with nursing recruitment grants; (3) methodology for recruiting, selecting, paying, and monitoring students; (4) number of nurses to be funded; (5) justification of need; and (6) description of proposed payback services by graduates. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. The narrative may not exceed five single-spaced pages in length, excluding attachments, budget, and required documentation. Pages must be numbered. Provide a narrative for year two, three, four, and five of the project; however, provide information only for those narrative items which you anticipate will change from year to year.

(a) Administration of the Grant

(1) Describe the organization submitting the application, include an organizational chart in appendix showing the grant's placement within the organization.

(2) Describe who will be responsible for administering the grant project. In the appendix, provide biographical sketches (resumes) and position descriptions for the program director and key personnel as described on pages 21–23 of form 5161–1.

(b) Prior Experience

Describe any previous experience the organization has had with nursing recruitment grant programs including information on the types of grants and funding.

(c) Methodology

(1) Describes how students will be recruited to assure maximum distribution of information about the availability of the scholarships.

(2) Describe the process by which scholarship recipients will be selected to assure fairness and consistent treatment.

(3) List, and if necessary, explain the criteria to be used in selecting recipients.

(4) Describe how and when students will be paid.

(5) Describe the process of monitoring to assure acceptable academic standing (refer to Section D—PROGRAMMATIC OBJECTIVES).

(d) Types of Scholarships

Provide information on the types and numbers of nursing scholarships to be funded.

(e) Service Payback

(1) A student must service one year for every year funded.

(2) The training institution must provide information on each scholarship recipient funded per semester, and academic year to the Section 112 Indian Health Service (IHS) Database.

(3) Indicate a plan for tracking placement of graduates and retention of nursing students in the nursing program.

(f) Evaluation

(1) Provide a narrative addressing how the conduct of the program will be evaluated. Define the procedures for determining whether the proposed methodology has been successful in announcing and carrying out the project. An evaluation should be conducted annually.

(2) Provide a narrative addressing how results of the program will be evaluated to determine the success of the Tribal scholarship program. This should be done at the end of year four to assist the IHS in determining the effectiveness of the program in meeting Tribal needs for nurses.

(3) Provide potential effectiveness of the proposed project in carrying out the purposes of Section 112, with special emphasis on the objectives and methodology portion of the application. This includes relevance of project objectives to grant program objectives; appropriateness and soundness of the procedures for identifying, recruiting, and retaining target population(s); and feasibility of project within proposed resources in time frames.

(4) Demonstrate capability of the applicant to successfully conduct the project, including organizational and scholarly commitment to the recruitment, education, and retention of students.

(5) The submission of verifying documentation when an applicant claims preference in order to be given priority.

Preference is given for programs which: (1) Provide a preference to AI/AN; (2) train nurse midwives or nurse practitioners; (3) are interdisciplinary; or (4) are conducted in cooperation with a center for gifted and talented AI/AN students established under section 5324 (a) of the Indian Education Act of 1988. Consideration will be given to the relationship of project objectives to Indian Health manpower's deficiencies, indicating the number of potential AI/An students to be contacted and recruited as well as potential cost per student recruited; (6) those projects that have the potential to serve a greater number of AI/AN will be given first consideration; (7) the soundness of the fiscal plan for assuring effective utilization of grant funds; and (8) the completeness and responsiveness of the application.

(k) *Budget:* An itemized estimate of costs must be provided on Standard Form 424A. All applications shall include funding requirements for the second, third, fourth and fifth budget periods. Project funding will be based on an average of $18,500 per scholarship. Projects must be for a minimum of five scholarship per academic year for all nursing programs.

Required Documentation

(a) Tribal Resolution

A resolution from the Tribal government specifically supporting this grant project must accompany the application submission. Resolution shall address the Tribal government's commitment to placement of program graduates. Applications by Tribal organizations will not require resolution(s) if the current Tribal resolution(s) under which they operate would encompass the proposed grant activities. A statement of proof of a copy of the current operational resolution must accompany the application. If a resolution or a statement is not submitted, the application will be considered incomplete and will be returned without consideration.

(1) *Review Process and Criteria:* Applications that meet eligibility requirements, are complete, and conform to this announcement will be reviewed by an Ad Hoc Review Committee. Applications will be reviewed against established criteria. The Ad Hoc Review Committee will assign a numerical score to each application, which will be used to rank applications. The Program Director will consider geographic location in order to limit only one grant within an IHS Area.

Applications will be evaluated against the following criteria and weights:

Weights—Criteria

40%—Methodology—Is the applicant's plan for conducting the project sound and effective? Has the applicant fully addressed the process of recruiting and selecting students? Will this process assure fair and consistent treatment of students? Is the monitoring process adequate to assure that students are complying with requirements? Will the process for placing, tracking, and retaining graduates be adequate to assure compliance with terms of the service obligation contract?

30%—Demonstrated capacity of the applicant to successfully conduct the project (accreditation). Is the applicant capable of successfully conducting the project from a technical and business standpoint? Are the qualification of the key personnel appropriate and adequate to carry out the projects? Is the applicant fiscal plan sound for use of both Federal and Non-federal funds?

15%—Need—Is the need for the project justified? Is there supporting documentation for conducting recruiting activities within the applicant's area?

10%—Evaluation—Does the applicant present a sound annual evaluation plan capable of determining success in announcing and carrying out the project? Does the applicant provide an evaluation plan for determining the success of the program within the applicant's organization at the end of the project period?

5%—Prior experience with similar programs.

(m) *Results of the Review:* Successful applicants will be notified through official Notice of Grant Award (NGA) documents. The NGA will state the amount of the Federal funds awarded, the terms and conditions of the grant award, the effective date of the award, the project period, and the budget period.

Dated: April 22, 2003.

Charles W. Grim,

Assistant Surgeon General, Interim Director, Indian Health Service.

[FR Doc. 03–11395 Filed 5–7–03; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Administration and Financing of Group Homes and Residential Facilities for Persons with Mental Illness—New—The Substance Abuse and Mental Health Services Administration (SAMHSA) will conduct a survey of state health officials to determine what types of residential care programs for persons with mental illness are operated in each State and the District of Columbia. The state health officials will be identified through Web searches of State Mental Health Departments and other relevant agencies on a state-by-state basis.

The survey will contact identified state health officials in all fifty states

(and the District of Columbia) and will gather information on the following six survey domains: Facility characteristics (for approximately five different types of group homes); Licensing and certification; Facility programs and treatment services; Seclusion and restraint; Facility monitoring and oversight; and, Financing.

The survey will identify and describe the types of residential facilities for persons with mental illness that are licensed, certified, and/or financed by State governments; the target population served by each facility type; the range of services provided in each facility type; provisions for monitoring each facility type, including the use of seclusion and restraints; and, sources of financing for each facility type.

This information collection supports the New Freedom Initiative, one of SAMHSA's current priorities. The New Freedom Initiative is the President's comprehensive plan to reduce barriers to full community integration for people with disabilities. The national survey will provide new information to SAMHSA and to other policymakers regarding the ways in which group homes and other types of residential facilities for adults, adolescents, and children with mental illness are established, regulated, and financed.

The questionnaire will be distributed to identified state health officials in electronic and/or paper formats. State health officials may either return the completed questionnaire via email or regular mail or request a telephone interview. In addition, respondents who do not return a completed paper questionnaire will be contacted and interviewed by telephone.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Number of respondents	Responses per respondent	Hours per response	Total hour burden
255	1	1	255

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 2, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–11420 Filed 5–7–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for Cooperative Agreements to Conduct Targeted Capacity Expansion (TCE) of Ecstasy and Other Club Drugs Prevention Interventions and/or Infrastructure Development.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention announces the availability of FY 2003 funds for the grant program described below. A synopsis of this funding opportunity, as well as many other Federal government funding opportunities, is also available at the Internet site: *www.fedgrants.gov.*

This notice is not a complete description of the program; potential applicants must obtain a copy of the Request for Applications (RFA), including part I, Cooperative Agreements to Conduct Targeted Capacity Expansion (TCE) of Ecstasy and Other Club Drugs Prevention Interventions and/or Infrastructure Development SP 03–007, part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application.

Funding Opportunity Title: Cooperative Agreements to Conduct Targeted Capacity Expansion (TCE) of Ecstasy and Other Club Drugs Prevention Interventions and/or Infrastructure Development—Short Title: Prevention of Ecstasy Abuse.

Funding Opportunity Number: SP 03–007.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: 519E of the Public Health Service Act, as amended and subject to the availability of funds.

Funding Instrument: CA.

Funding Opportunity Description: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Prevention is accepting applications for fiscal year 2003 for cooperative agreements to conduct targeted capacity expansion of ecstasy and other club drug prevention interventions and/or infrastructure development.

Eligible Applicants: Eligible applicants are public and domestic private non-profit entities such as units of State and local governments, Indian tribes and tribal organizations, community-based organizations, managed care and other health care delivery systems, universities and colleges, faith-based organizations, local law enforcement agencies, and current grantees as well as entities that are not current grantees.

Due Date for Applications: July 22, 2003.

Estimated Funding Available/Number of Awards: Approximately $4 million will be available for 14 awards in FY 2003. The average award will range from $300,000 to $350,000 in total costs (direct and indirect). Applications with proposed budgets that exceed $350,000 will be returned without review. Actual funding levels will depend on the availability of funds.

Is Cost Sharing Required: No.

Period of Support: Awards may be requested for up to one year. Depending on the availability of funds, grantees may be allowed to apply for limited competitive renewal at the end of the first year to continue funding for an additional one or two years.

How to Get Full Announcement and Application Materials: Complete application kits may be obtained from: the National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686. The PHS 5161–1 application form and the full text of the funding announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (click on 'Grant Opportunities').

When requesting an application kit, the applicant must specify the funding opportunity title and number for which detailed information is desired. All information necessary to apply, including where to submit applications

and application deadline instructions, are included in the application kit.

Contact for Additional Information: Pamela C. Roddy, Ph.D, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse and Prevention, 5600 Fishers Lane, Rockwall II, Suite 1075, Rockville, MD 20857, (301) 443–1001, E-Mail: *proddy@samhsa.gov.*

Dated: May 2, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–11394 Filed 5–7–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–21]

Notice of Proposed Information Collection: Comment Request; Certified Eligibility for Adjustments for Damage or Neglect

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commission, HUD.

ACTION: Notice

SUMMARY: The proposed information collection requirement described below will be 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:* July 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Certified Eligibility for Adjustments for Damage or Neglect.

OMB Control Number, if applicable: 2502–0349.

Description of the need for the information and proposed use: This information collection is needed to permit a one-time certification by mortgagees that they have acquired hazard insurance acceptable to HUD at a reasonable rate. The information collection will also permit the mortgagee to convey fire damaged properties without a surcharge to the claim.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 125; the number of respondents is 250 generating 250 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 30 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: April 29, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–11397 Filed 5–7–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

California Desert District Advisory Council; Notice of Renewal

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: California Desert District Advisory Council notice of renewal.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Notice is hereby given that the Secretary of the Interior has renewed the Bureau of Land Management's California Desert District Advisory Council.

The purpose of the Council is to provide counsel and advice to the BLM District Manager concerning planning and management of the public land resources within the BLM California Desert District and implementation of the comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area.

Certification Statement

I hereby certify that the renewal of the California Desert District Advisory Council is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Alden Boetsch, Intergovernmental Affairs (640), Bureau of Land Management, 1620 L Street, NW., Room 406 LS, Washington, DC 20240, telephone (202) 452–5165.

Dated: April 30, 2003.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 03–11392 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act; Annual Certification of Hunting and Sport Fishing Licenses Issued

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) will submit the collection

of information described below to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (PRA). You may obtain copies of the collection requirement, related forms, and explanatory material by contacting the Service's Information Collection Clearance Officer at the address listed below. We are soliciting public comment on this information collection.

DATES: Interested parties must submit comments on or before July 7, 2003.

ADDRESSES: Mail your comments on the information collection to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203; or e-mail *Anissa_Craghead@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Anissa Craghead at (703) 358–2445 or *Anissa_Craghead@fws.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). We plan to submit a request to OMB to renew its approval of the collection of information related to the annual certification of hunting and sport fishing licenses issued by States, territories, and local governments. We are requesting a 3-year term of approval for this information collection activity. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0007.

The Service administers grant programs authorized by the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669b, 669–669k) and the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777m). These Acts require that States annually certify their hunting and fishing license sales. The Service uses the information collected to determine apportionment and distribution of funds under these Acts. We are proposing minimal changes to the forms we use to collect this information.

Title: Annual Certification of Hunting and Sport Fishing Licenses Issued. (**Note:** This collection consists of two parts: Part 1, Certification, and Part 2, Summary.)

OMB Approval Number: 1018–0007.

Service Form Number(s): 3–154a (Part 1) and 3–154b (Part 2).

Frequency of Collection: Annually.

Description of Respondents: State, territorial (the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa), and local governments, and others receiving grant funds.

Total Annual Burden:

Form name	Completion time per form (hours)	Annual number of respondents (forms)	Annual hour burden
Certification (Part 1)	½	56	28
Summary (Part 2)	½	56	28
Totals		112	56

We invite comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 30, 2003.

Matt Hogan,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–11428 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act; Grant Agreement and Amendment to Grant Agreement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) will submit the collection of information described below to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (PRA). You may obtain copies of the collection requirement, related forms, and explanatory material by contacting the Service's Information Collection Clearance Officer at the address listed below. We are soliciting public comment on this information collection.

DATES: Interested parties must submit comments on or before July 7, 2003.

ADDRESSES: Mail your comments on the information collection to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203; or e-mail *Anissa_Craghead@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Anissa Craghead at (703) 358–2445 or *Anissa_Craghead@fws.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). We plan to submit a request to OMB to renew its approval of the collection of information for the Grant Agreement and Amendment to Grant Agreement. We are requesting a 3-year term of approval for this information collection activity. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a

currently valid OMB control number. The OMB control number for this collection of information is 1018–0049.

Under the authority of the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777l), the Anadromous Fish Conservation Act (16 U.S.C. 757a–757g), the Endangered Species Act (16 U.S.C. 1531 *et seq.*), the Clean Vessel Act (16 U.S.C. 777c), the Sportfishing and Boating Safety Act (16 U.S.C. 777g–1), and the Coastal Wetlands Planning, Protection, and Restoration Act (16 U.S.C. 3951–3956), we administer several grant programs. We use the information collected in grant applications and agreements to make awards under these grant programs. The information collected on the grant applications and agreements helps us determine whether the estimated cost of the grant project is reasonable, the cost sharing is consistent with the applicable program statutes, and sufficient Federal funds are available for obligation. The State or other grantee uses the grant application forms and agreements to request funds and identify proposed cost sharing. Grantees complete an Amendment to Grant Agreement to request a change to a previously approved Grant Agreement. We use the Amendment to Grant Agreement to revise a previous funding obligation or otherwise document the approval of a revision. The Grant Agreement and Amendment to Grant Agreement that we will submit to OMB for approval are modified slightly to lesson the burden on the public and to make them easier for the Service to use.

Title: Grant Agreement and Amendment to Grant Agreement.

OMB Approval Number: 1018–0049.

Service Form Number(s): 3–1552 (Grant Agreement) and 3–1591 (Amendment to Grant Agreement).

Frequency of Collection: Annually.

Description of Respondents: State, territorial (the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa), and local governments, and others receiving grant funds.

Total Annual Burden:

Form name	Completion time per-form (hours)	Annual number of respondents	Annual hour burden
Grant Agreement	1	3500	3500
Amendment to Grant Agreement	1	1750	1750
Totals	.....	5250	5250 hours

We invite comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 30, 2003.

Matt Hogan,

Acting Director, Fish and Wildlife Service

[FR Doc. 03–11429 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Guidance for the Establishment, Use, and Operation of Conservation Banks

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, are announcing availability of guidance for the establishment, use, and operation of conservation banks. Conservation banks are a tool to offset adverse impacts to species listed as threatened or endangered under the Endangered Species Act of 1973, as amended. The purpose of this guidance is to help Service personnel evaluate and approve conservation banks in the context of fulfilling the purposes of the Endangered Species Act.

ADDRESSES: You can obtain an electronic copy of the guidance from the Fish and Wildlife Service's Web site at ''*http://endangered.fws.gov/*''. You can also request a copy of the guidance by contacting the Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203 (Telephone 703/358–2171, Facsimile 703/358–1735).

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Fish and Wildlife Service (Telephone 703/358–2171, Facsimile 703/358–1735).

SUPPLEMENTARY INFORMATION: A conservation bank is a parcel of land containing natural resource values that are conserved and managed in perpetuity for listed species and used to offset impacts to the comparable resource values on non-bank lands occurring elsewhere. The bank is specifically managed and protected by the banker or designee for its natural resource values. The values of the natural resources are translated into quantified ''credits.'' The bank owner sells habitat ''credits'' to parties that need to compensate for the environmental impacts of their activities. A conservation bank is a free-market enterprise that offers landowners economic incentives to protect natural resources, saves developers time and money by providing them with certainty of pre-approved compensation lands, and provides long-term protection of habitat. Conservation banking creates a collaborative incentive based approach where habitat for listed species is treated as an asset rather than a liability.

The Service has already entered into several agreements with landowners to establish conservation banks, mainly in the southwest and the southeast areas of the country. We believe that guidance will help establish conservation banks in other parts of the country. Please refer to the **ADDRESSES** section of this notice for information on how to obtain a copy of the guidance.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 25, 2003.

Matt Hogan,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–11458 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal-State Gaming Compact Amendments between the Forest County Potawatomi and the State of Wisconsin taking effect.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, is publishing notice that the 2003 Amendments to the Tribal-State Compact for Class III gaming between the Forest County Potawatomi Community and the State of Wisconsin executed on February 19, 2003 are considered approved. By the terms of IGRA, the 2003 Amendments to the Compact are considered approved, but only to the extent the 2003 Amendments are consistent with the provisions of IGRA.

The 2003 Amendments expand the scope of gaming activities authorized under the Compact, remove limitations on wager limits, remove limitations on the number of permitted gaming devices, extend the term of the compact to an indefinite term, subject to re-opener clauses, institute an entirely new dispute resolution provision, replaces the sovereign immunity provision, and substantially modifies the revenue-sharing provision of the Compact.

EFFECTIVE DATE: May 8, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: April 30, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–11390 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–EU; FF–93920]

Notice of Application for a Recordable Disclaimer of Interest for Lands Underlying a Portion of the Black River, the Black River Slough, the Salmon Fork, the Grayling Fork, and Bull Creek Located in Northeastern Alaska

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The State of Alaska has submitted an application for a recordable disclaimer of interest from the United States pursuant to Section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745 (1994) and the regulations contained in 43 CFR part 1864. A recordable disclaimer of interest for these lands, if issued, will confirm the United States has no valid interest in the subject lands. This Notice is intended to notify the public of the pending application and the State's grounds for supporting it.

DATES: For a period of 90 days from the date of publication of this Notice, all interested parties may submit comments on the State's application, BLM Casefile FF–93920. A final decision on the merits of the application will not be made until 90 days has elapsed from the date of publication of this Notice.

ADDRESSES: Comments should be sent to the Chief, Branch of Lands and Realty, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Mike Haskins, Branch of Lands and Realty, BLM Alaska State Office, 907–271–3351.

SUPPLEMENTARY INFORMATION: On February 14, 2003, the State of Alaska filed an application for a recordable disclaimer of interest affecting five water bodies described below. The State asserts these water bodies are navigable and, under the Equal Footing Doctrine, the State of Alaska gained title to lands underlying navigable waters upon statehood. The State's evidence of navigability of the Black River, the Salmon Fork, the Grayling Fork, and Bull Creek include administrative determinations made by the BLM, dated March 28, 1980, and July 22, 1983. A decision of the United States Court of Appeals for the Ninth Circuit, *Alaska* v. *United States*, 201 F.3d 1154 (9th Cir. 1997), which discusses the historic uses of the Black River, was also submitted as evidence with the application.

The water bodies included in the application are that portion of the bed of the Black River and Black River Slough, between the ordinary high water marks on its banks from its confluence with the Porcupine River, within T. 21 N., R. 13 E., Fairbanks Meridian, Alaska, to its confluence with the Wood River within T. 13 N., R. 27 E., Fairbanks Meridian; the Salmon Fork to the International Boundary; the Grayling Fork to the International Boundary; Bull Creek to Section 5, T. 13 N., R. 31 E., Fairbanks Meridian. Also included within the State's application are all interconnecting sloughs associated with these water bodies.

The State of Alaska did not identify any known adverse claimant or occupant of the affected lands.

Dated: May 1, 2003.

Mike Haskins,

Chief, Branch of Lands and Realty, Division of Resources, Lands, and Planning.

[FR Doc. 03–11621 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Conservation Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982 (RRA), the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Management Plans (Criteria). Note: For the purpose of this announcement, Water Management Plans are considered the same as Water Conservation Plans (Plans).

DATES: The final version is now available.

ADDRESSES: For copies contact Leslie Barbre, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, 916–978–5232 (TDD 978–5608), or e-mail at *lbarbre@mp.usbr.gov.* Bryce White, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, 916–978–5208 (TDD 978–5608), or e-mail at *bwhite@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact

Leslie Barbre or Bryce White at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are notifying the public that the 2002 revision of the Criteria is final. Section 3405(e) of the CVPIA (Title 34 Pub. L. 102–575), requires the Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices (BMPs) that shall develop Criteria for evaluating the adequacy of all Plans developed by project contractors, including those Plans required by section 210 of the RRA. Also, according to section 3405(e)(1), the Criteria must be developed ''* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.''

The Criteria states that all parties (Contractors) that contract with Reclamation for water supplies (except any contractor who receives under 2,000 acre feet, municipal and industrial contracts under 3,300 people served, and agricultural contracts under 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District
2. Inventory of Water Resources
3. BMPs for Agricultural Contractors
4. BMPs for Urban Contractors
5. Plan Implementation
6. Exemption Process
7. Regional Criteria
8. Five-Year Revisions

Reclamation will evaluate Plans based on the Criteria. The CVPIA requires Reclamation to evaluate, and revise if necessary, the Criteria every 3 years. The Criteria were previously revised in 1996 and 1999.

Public comment on revision of the 2002 Criteria was received and generally incorporated. No significant changes were made to the draft Criteria. A copy can be found at the following Web site: *http://www.mp.usbr.gov/watershare/documents/files/cvpia/final2002cvpiacriteria.pdf.* A copy can also be obtained by contacting persons at the address below. The 2002 Criteria will now be used to evaluate Plans submitted after the date of this publication

Dated: May 1, 2003.

Donna E. Tegelman,

Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 03–11470 Filed 5–7–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–492]

Certain Plastic Grocery and Retail Bags; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 2, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Superbag Corp. of Houston, Texas. An amended complaint was filed on May 1, 2003. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain plastic grocery and retail bags by reason of infringement of claims 1–8 and 15–19 of U.S. Patent No. 5,188,235. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2746.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in §210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 1, 2003, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain plastic grocery or retail bags by reason of infringement of one or more of claims 1–8 and 15–19 of U.S. Patent No. 5,188,235, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Superbag Corp., 9291 Baythorne Drive, Houston, Texas 77041.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Thai Plastics Bags Industries Co., Ltd., 42/174 Moo 5, Soi Srisatian, Raiking, Sampran, Nakhon Pathom 73210, Thailand.

Hmong Industries, Inc., 700 Prior Avenue North, St. Paul, Minnesota 55104.

Spectrum Plastics, Inc., 12850 Midway Place, Cerritos, California 90703.

Pan Pacific Plastics Mfg., Inc., 33441 Central Avenue, Union City, California 94587.

(c) David H. Hollander, Jr., Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with §210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the

Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: May 2, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–11423 Filed 5–7–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Safe Drinking Water Act

Notice is hereby given that on April 22, 2003, a proposed Consent Decree in *United States* v. *Syd H. Levine, et al.,* Civil No. 4:97CV–169–M, was lodged with the United States District Court for the Western District of Kentucky.

In this action the United States sought civil penalties and injunctive relief for numerous violations of Section 1423(b) of the Safe Drinking Water Act, 42 U.S.C. 300h-2(b), and its implementing Underground Injection Control regulations for Kentucky, 40 CFR part 144. The alleged violations include [violations of an Administration Order on Consent entered into in] August 1990 by EPA and defendant Doofus Oil, doing business as Syd H. Levine and Associates, as the operator of underground injection wells owned by Hel-leva, Poor Boy, and Levine Development. In settlement of these allegations, the defendants will conduct mechanical integrity tests on their 52 underground injection wells that are the subject of this action under a compliance schedule set forth in the Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Syd H. Levine, et al.,* D.J. Ref. 90–5–1–1–4391.

The Consent Decree may be examined at the office of the United States Attorney, 510 W. Broadway, 10th Floor, Louisville, Kentucky, and at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov,*) fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $10.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–11401 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice Lodging of Consent Decree Under the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act

Under 28 CFR § 50.7, notice is hereby given that on April 23, 2003, a proposed Consent Decree in *United States* v. *Metal Management Midwest, Inc.,* Civil Action No. 01C–4551 was lodged with the United States District Court for the Northern District of Illinois.

In this action the United States sought civil penalties and injunctive relief relating to violations of the National Recycling and Emissions Reduction Program provisions of the Clean Air Act, as well as violations of the Clean Water Act and the Resource Conservation and Recovery Act (''RCRA'') at three scrap yards located in Chicago, Illinois. The Consent Decree requires that Metal Management Midwest come into compliance with the applicable environmental laws and regulations, produce and distribute educational materials relating to proper recycling and disposal of chlorofluorocarbons, conduct environmental compliance audits at four additional Illinois facilities, and pay a civil penalty in the form of a $2,275,500 allowed claim in Metal Management's chapter 11 bankruptcy action (*In re: Metal Management, Inc.,* Case No. 00–4303 (Bankr. D. Del.)).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Metal Management Midwest, Inc.,* D.J. Ref. #90–5–2–1–07207.

The Consent Decree may be examined at the Office of the United States Attorney, 219 South Dearborn Street, Chicago, IL 60604, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period, the consent Decree, may also be examined on the following Department of Justice Web site, *http//:www.usdoj.gov/enrd/open.html* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $23.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–11399 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 25, 2003, a proposed Consent Decree in *United States* v. *Morgantown Engineering and Construction, Inc.* (N.D.W.Va.), C.A. No. 1: 03CV56, was lodged with the United States District Court for the Northern District of West Virginia.

In this action, the United States sought response costs incurred by the Environmental Protection Agency (''EPA''), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9607, in connection with the clean-up of the Beaumont Glass Site, located in Morgantown, West Virginia. EPA incurred $7.3 million in response costs. The Consent Decree represents an ability-to-pay settlement with Morgantown Engineering and Construction, Inc. (''MEC''), the owner of the Site. Under the Consent Decree, MEC will pay EPA $250,000 in three installments over a period of two years. MEC will pay $25,000 within 30 days after entry of the Consent Decree by the court and will pay $112,500, plus interest as provided in the Consent Decree, one year later, and a third payment of $112,500, plus interest, two years after the entry date.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Morgantown Engineering and Construction, Inc.,* DOJ Ref. No. 90–11–3–07651.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 1100 Main Street, Suite 200, Wheeling, West Virginia 26003; and U.S. EPA Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.00 (.25 cents per page reproduction costs), payable to the U.S. Treasury.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 03–11400 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environment Response, Compensation, and Liability Act

Notice is hereby given that on April 17, 2003, a proposed consent decree in *United States* v. *Wyeth, et al,* Civil Action No. 03–1758, was lodged with the United States District Court for the District of New Jersey.

In this action, the United States alleges under, *inter alia,* Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, that Wyeth, f/k/a American Home Products, Corporation, and Wyeth Holdings Corporation, f/k/a American Cyanamid Company, are liable for the federal government's costs in responding to the release or threatened release of hazardous substances at the American Cyanamid Superfund Site in Bridgewater Township, Somerset County, New Jersey (the Site). Under the terms of the proposed consent decree, the settling defendants will pay the United States the sum of $220,000 with respect to the United States' claims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Wyeth, et al.,* Civil Action No. 03–1758, D.J. Ref. 90–11–3–07250.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102, and at U.S. Environmental Protection Agency Region II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the proposed consent decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed consent decre, please so note and enclose a check in the amouint of $4.50 (25 cent per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 03–11402 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Michael J. Clair, D.D.S.; Revocation of Registration

On March 12, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael Jerome Clair, D.D.S. (Dr. Clair) at his registered location in Orlando, Florida. The Order to Show Cause notified Dr. Clair of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BC1867172 under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. Specifically, the Order to Show Cause alleged that Dr. Clair was without state license to handle controlled substances in the State of Florida. The Order to Show Cause also notified Dr. Clair that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

As alluded to above, the Order to Show Cause was sent by certified mail to Dr. Clair at his registered address, however, the order was returned to DEA unclaimed. On April 19, 2002, DEA investigators hand delivered the Order to Show Cause to the aforementioned registered address where investigators left the order with Dr. Clair's wife. DEA has not received a request for hearing or any other reply from Dr. Clair or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Clair is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Clair is currently registered with DEA as a practitioner authorized to handle controlled substances in Schedules II through V. In or around

September 2001, Dr. Clair sought to renew his DEA registration when he submitted an undated application for renewal. In response to a question on the application which asks the applicant whether he has ever had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, Dr. Clair replied in the affirmative. He supplemented that response with a written explanation where he asserted that his Maryland dental license had been revoked in August 2000 for a period of five years, but the revocation action was ''not related in any way to the prescribing of controlled substances.'' Dr. Clair further wrote that he is ''* * * actively licensed in [Florida] and [Massachusetts].''

The Deputy Administrator's review of the investigative file reveals that on September 17, 2001, the State of Florida Board of Dentistry (Dental Board) entered a Final Order revoking Dr. Clair's state license to practice dentistry. The Dental Board's action was taken in response to the revocation of Dr. Clair's license to practice in the State of Maryland on August 12, 1999. The Dental Board also based its action in part upon findings that while practicing dentistry in Maryland, Dr. Clair performed unnecessary dental procedures on patients and encourage dentists who worked for him to do the same.

Despite assertions of professional good standing in Florida which accompanied his most recent DEA renewal application, there is no evidence before the Deputy Administrator to rebut findings that Dr. Clair's Florida dental license has been revoked and has not been reinstated. Therefore, the Deputy Administrator finds that since Dr. Clair is not currently authorized to practice dentistry in Florida, it is reasonable to infer that he is not authorized to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Richard J. Clement, M.D., 68 FR 12103 (2003); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Clair is not licensed to handle controlled substances in Florida, where he is registered with DEA. Therefore, he is not entitled to maintain that registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BC1867172, issued to Michael Jerome Clair, D.D.S., be, and it hereby is, revoked. The Deputy Administrator further orders that Dr. Clair's pending application for renewal of the aforementioned registration be, and it hereby is, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 03–11431 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02–41]

Jacqueline Cleggett-Lucas, M.D., JCL Enterprises, L.L.C, Revocation of Registration

On March 21, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jacqueline Cleggett-Lucas, M.D., and JCL Enterprises, L.L.C. (Respondents) [1], proposing to revoke her DEA Certificate of Registration, BC3404681, pursuant to 21 U.S.C. 824(a)(4) and deny any pending applications for renewal or modification of such registration under 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that the Respondents' continued registration would be inconsistent with the public interest and that the Respondent was no longer authorized to handle controlled substances in Louisiana, the State in which she practices.

By letter dated April 24, 2002, the Respondents, through legal counsel, requested a hearing in this matter. In the request for hearing, the Respondents legal counsel argued that ''(Respondents) have not been found guilty of 'prescribing large amounts of controlled substances in an inappropriate (manner) to many people who do not [have] proven indications for the need of pain alleviating drugs.' '' The Respondents further asserted that any decision involving the DEA license at issue should be withheld pending the outcome of a scheduled hearing before the Louisiana State Board of Medical Examiners (Board).

On May 31, 2002, the Government filed Government's Motion for Summary Disposition and a request for stay of proceedings pending a ruling on its motion. On June 3, 2002, the presiding Administrative Law Judge Gail A. Randall (Judge Randall) issued an Order providing Respondents until June 24, 2002, to respond to the Government's motion. However, the Respondents did not file a response.

On July 19, 2002, Judge Randall issued her Opinion, Order, and Recommended Ruling of the Administrative Law Judge (Opinion and Recommended Ruling) where she granted the Government's motion for summary disposition and found that the Respondents lack authorization to handle controlled substances in the State of Louisiana. In granting the Government's motion, Judge Randall also recommended that the Respondents' DEA registration be revoked and any pending applications for renewal be denied. Neither party filed exceptions to her Opinion and Recommended Ruling, and on October 29, 2002, Judge Randall transmitted the record of these proceedings to the Office of the Deputy Administrator. The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Deputy Administrator finds that the Respondents are currently registered as a practitioner under DEA Certificate of Registration BC3404681. That registration was issued under the names of two separate entities at an address in New Orleans, Louisiana. On February 14, 2002, the Board issued its Order for Summary Suspension of Medical License with respect to the Respondents' Louisiana medical license. The Board's action was based on a finding that the Respondent inappropriately prescribed ''large amounts of controlled drugs'' to individuals for no legitimate medical purpose. While the Civil District Court of Louisiana granted the Respondents' subsequent request for stay of the Board's suspension order, that same court lifted the stay on February 22, 2002, and reinstated the suspension of Respondents' medical license.

[1] In her July 19, 2002, Opinion, Order, and Recommended Ruling, Administrative Law Judge Gail A. Randall noted that for purposes of these proceedings, the two names represented herein are separate entities who obtained a single DEA registration by virtue of Dr. Gleggett-Lucas' ability to handle controlled substances. The Deputy Administrator hereby adopts that finding for purposes of this final ruling.

Notwithstanding the Respondents' request that DEA withhold its decision regarding her Certificate of Registration pending completion of a Board hearing, there is no evidence before the Deputy Administrator that the Board has taken any action to lift the current suspension of the Respondent's medical license.

In her Opinion and Recommended Ruling, Judge Randall found that the Respondent is without State authority to handle controlled substances. The Deputy Administrator adopts the finding of the Administrative Law Judge.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances in the State in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Muttaiya Darmarajeh, M.D.; 66 FR 52936 (2001); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. There is no dispute that the Respondents are currently without authorization to handle controlled substances in Louisiana. Therefore, it is well settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. *See* Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), *aff'd sub nom Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BC3404681, issued to Jacqueline Cleggett-Lucas, M.D. and JCL Enterprises, L.L.C. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–11435 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02–52]

Francis A. Goswitz, M.D.; Revocation of Registration

On June 24, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Francis A. Goswitz, M.D. (Respondent), proposing to revoke his DEA Certificate of Registration, AG0387604, pursuant to 21 U.S.C. 824(a). The Order to Show Cause alleged, *inter alia*, that the Respondent's Tennessee State medical license had been suspended.

By letter dated July 19, 2002, the Respondent, through legal counsel, requested a hearing in the matter. In the request for hearing, the Respondent's legal counsel acknowledged that the Respondent's medical license had been suspended by the Tennessee Department of Health, but argued that the matter ''is pending, and a hearing on the merits has not yet been held.''

On August 13, 2002, the Government filed a Motion for Summary Disposition and Stay of Proceedings, arguing that as of August 6, 2002, the Respondent's medical license remained suspended. On August 15, 2002, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued a Memorandum to Counsel staying the filing of prehearing statements and providing the Respondent until September 4, 2002, to respond to the Government's motion. However, the Respondent did not file a response to the motion.

On October 8, 2002, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision) where she granted the Government's motion for summary disposition and found that the Respondent lacked authorization to handle controlled substances in the State of Tennessee. In granting the Government's motion, Judge Bittner also recommended that the Respondent's DEA Certificate of Registration be revoked and any pending applications for modification or renewal of that registration be denied. Neither party filed exceptions to her Opinion and Recommended Decision, and on November 12, 2002, Judge Bittner transmitted the record of these proceedings to the Office of the Deputy Administrator for a final agency decision.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Deputy Administrator finds that the Respondent is currently registered as a practitioner under DEA Certificate of Registration AG0387604. On February 14, 2002, the Tennessee Board of Medical Examiners (Board) issued an Order of Summary Suspension with respect to the Respondent's Tennessee medical license. The Board's action was based in part upon a finding that the Respondent engaged in inappropriate sexual conduct with a patient, and subsequently attempted to influence her testimony by offering the patient money. The Board also found that in September 2001, the Respondent dispensed to a patient and her husband the controlled substances hydrocodone and alprazolam, for no legitimate medical purpose.

In its Motion for Summery Disposition, the Government attached a declaration from the Administrator of the Board, who asserted that the Respondent's Tennessee medical license remains suspended. Judge Bittner agreed with the Government that the Respondent is without state authority to handle controlled substances in Tennessee, and accordingly, granted the Government's Motion for Summary Disposition.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Muttaiya Darmarajeh, M.D., 66 FR 52936 (2001); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that the Respondent is not licensed to handle controlled substances in Tennessee, the state where he currently holds a DEA registration. Therefore, he is not entitled to maintain that registration. Because the Respondent lacks state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address whether or not his Certificate of Registration should be revoked based upon allegations of his improper dispensing of controlled substances and other public interest grounds alleged in the Order to Show Cause. See Samuel Silas Jackson, D.D.D., 67 FR 65145 (2002); Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997);

Sam F. Moore, D.V.M. 58 FR 14428 (1993).

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. There is no dispute that the Respondent is currently without authorization to handle controlled substances in Tennessee. Therefore, it is well settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. *See* Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kirk, M.D., 48 FR 32,887 (1983), aff'd sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers*, AFL-CIO, 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AG0387604, issued to Francis A. Goswitz, M.D. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of the aforementioned registration be, and they hereby are, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–11430 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 01–30]

Michael D. Jackson, M.D.; Revocation of Registration

On June 8, 2001, the then-Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause, Immediate Suspension of Registration to Michael Delano Jackson, M.D. (hereinafter referred to as ''Respondent'') of the Myrtle Beach Medical Center in Myrtle Beach, South Carolina. The Order to Show Cause notified the Respondent of an opportunity to show cause as the why DEA should not revoke his DEA Certificate of Registration, BJ5063532 pursuant to 21 U.S.C. 824(a)(4) and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f), for reason that Respondent's continued registration with DEA would be inconsistent with the public interest.

Specifically, the Order to Show Cause outlined numerous allegations related to *inter alia,* the Respondent issuing various Schedules II through IV controlled substances for no legitimate medical purpose. Included among the drug purportedly prescribed in this fashion was OxyContin, a heavily abused Scheduled II narcotic controlled substance. The Order to Show Cause further notified the Respondent of the immediate suspension of his DEA Certificate of Registration, with the suspension to remain in effect until the final determination was reached in this matter.

By letter dated June 20, 2001, the Respondent acting *pro se* requested a hearing on the matter raised in the Order to Show Cause. Following the filing of various pre-hearing submissions by the respective parties, on May 22, 2002, the Government filed Government's Request for Stay of Proceedings and Motion for Summary Judgment (Motion). The Government asserted in its motion that the Respondent was without state authority to handle controlled substances in the State of South Carolina as well as in Alabama where he has apparently relocated his medical practice. On May 28, 2002, the presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued a Memorandum to Counsel and Ruling on Motion affording the Respondent until June 11, 2002, to respond to the Government's Motion. However, the Respondent did not file a response.

On June 13, 2002, Judge Bittner issued her Opinion and Recommended Ruling of the Administrative Law Judge (Opinion and Recommended Ruling) where she granted the Government's Motion for Summary Disposition and found that the Respondent lacks authorization to handle controlled substances in South Carolina. In granting the Government's motion, Judge Bittner further recommended that the Respondent's DEA registration be revoked and any pending applications for modification or renewal be denied. Neither party filed exceptions to the Administrative Law Judge's Opinion and Recommended Decision, and on July 17, 2002, Judge Bittner transmitted the record of these proceedings to the Office of the Deputy Administrator. Following a review of the record in this proceeding, the Deputy Administrator now enters his final order pursuant to 21 CFR 1301.46.

The Deputy Administrator finds that the South Carolina Department of Health and Environmental Control (DHEC), Bureau of Drug Control, maintains a database of practitioners in South Carolina who possess valid state authority to handle controlled substances. On May 17, 2002, a DEA Diversion Investigator assigned to the agency's South Carolina District Office contacted DHEC and inquired whether the Respondent possessed state authority to handle controlled substances in that state. The investigator was informed that on June 14, 2001, DHEC revoked Respondent's state controlled substance license following the suspension of his DEA Certificate of Registration. DHEC divulged further that the Respondent surrendered his state medical license on June 29, 2001, and as a consequence, he lacks authority to handle controlled substances in South Carolina.

The Deputy Administrator's review of the records of the Alabama State Board of Medical Examiners reveals that the Respondent was also issued a controlled substance certificate in that state on June 29, 2001. That certificate expired on December 31, 2001. There is no evidence in the record that the Respondent's South Carolina medical license or his Alabama controlled substances certificate have been reinstated. It is clear that the Respondent lacks controlled substance authority in Alabama. In addition, since the Respondent is not currently authorized to practice medicine in the State of South Carolina, the Deputy Administrator finds it reasonable to infer that he is not authorized to handle controlled substances in that state as well.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Joseph Thomas Allevi, M.D., 67 FR 35581 (2002); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that the Respondent is not licensed to handle controlled substances in South Carolina where he is registered with DEA, or in Alabama, where he has apparently relocated his medical practice. Therefore, the Respondent is not entitled to maintain his DEA Certificate of Registration. Because he is not entitled to a DEA registration due to his lack of state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to

address whether the Respondent's registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause. *See* Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BJ5063552, issued to Michael D. Jackson, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 03–11433 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Kenneth S. Nave, M.D.; Denial of Application

On April 10, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Kenneth S. Nave, M.D. (Dr. Nave) of Chicago, Illinois, notifying him of an opportunity to show cause as to why DEA should not deny his pending application for DEA Certificate of Registration, pursuant to 21 U.S.C. 823(f) for reason that such registration would be inconsistent with the public interest. The Order to Show Cause also notified Dr. Nave that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Nave at his proposed registered location in Chicago, Illinois. The order was returned to DEA on June 10, 2002 by the United States Postal Service indicating that it had been ''unclaimed.'' On June 11, 2002, DEA resent the show cause order to the same address by regular mail. The order was not returned. DEA has not received a request for hearing or any other reply from Dr. Nave or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the attempted delivery of the Order to Show Cause at the applicant's last known address, and (2) no requests for hearing having been received, concludes that Dr. Nave is deemed to have waived his hearing right. *See* David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator's review of the investigative file reveals that on January 3, 2002, the Illinois Medical Disciplinary Board (Board) issued its Findings of Fact, Conclusions of Law and Recommendation (Recommendation) to the Director of the State Department of Professional Regulation (Director). Following its finding of a ''long history of chemical dependency with several relapses'' the Board recommended the indefinite suspension of Dr. Nave's Physician and Surgeon's license for a period of one year. The Director adopted the Board's Recommendation and effective March 5, 2002, ordered the indefinite suspension of Dr. Nave's Physician and Surgeon's license as well as his Controlled Substance license for a minimum period of one year.

The Deputy Administrator's review of a DEA investigative report further revealed that as of April 3, 2003, Dr. Nave's Physician and Surgeon and Controlled Substance licenses remained suspended in the State of Illinois. As of the date of this final order, there is no evidence in the record that these licenses have been reinstated. Therefore, the Deputy Administrator's finds that Dr. Nave currently lacks state authorization to practice medicine and handle controlled substances in Illinois.

DEA does not have statutory authority under the Controlled Substances Act to issue a registration if the applicant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). The Deputy Administrator and his predecessors have consistently so held. *See* Douglas L. Geiger, M.D., 67 FR 64418 (2002); Theodore T. Ambadgis, M.D., 58 FR 5759 (1993); Ihsan A. Karaagac, M.D., 51 FR 34694 (1986).

Here, it is clear that Dr. Nave is not licensed to handle controlled substances in Illinois, where he seeks registration with DEA. Therefore, he is not entitled to such registration. Because Dr. Nave lacks state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address whether or not his application for DEA registration should be denied based upon the public interest grounds asserted in the Order to Show Cause. *See* Samuel Silas Jackson, D.D.S., 67 FR 65145 (2002); Nathaniel-Aikens-Afful, M.D., 62 FR 16871 (1997); Sam F. Moore, D.V.M., 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certification of Registration, submitted by Kenneth S. Nave, M.D., be, and it hereby is, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–11432 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Fereida Walker-Graham, M.D.; Revocation of Registration

On August 16, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Fereida Walker-Graham, M.D. (Dr. Walker-Graham) at her registered location in Trotwood, Ohio, and at a second location in Dayton, Ohio. The Order to Show Cause notified Dr. Walker-Graham of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, BW2846256 under 21 U.S.C. 824(a)(2), (a)(3), and (a)(4), and deny any pending applications for renewal or modification of that registration for reason that Dr. Walker-Graham was convicted of a felony offense related to controlled substances, is not authorized to handle controlled substances in the State of Ohio, and her continued registration would be inconsistent with the public interest. The order also notified Dr. Walker-Graham that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

As alluded to above, the Order to Show Cause was sent by certified mail to Dr. Walker-Graham at a location in Dayton, Ohio, and DEA received a signed receipt indicating that it was received sometime in August 2001. DEA has not received a request for hearing or any other reply from Dr. Walker-Graham or anyone purporting to represent her in this matter.

Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing

having been received, concludes that Dr. Walker-Graham is deemed to have waived her hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that on June 14, 2000, the State Medical Board of Ohio (Board) entered an order permanently revoking Dr. Walker-Graham's State license to practice medicine and surgery. The Board's action arose in part from a finding that Dr. Walker-Graham dispensed phentermine (A Schedule IV controlled substance) to numerous individuals for no legitimate medical purpose. Included among the individuals that received controlled substances from Dr. Walker-Graham were several undercover officers from a local investigations unit know as the Combined Agencies for Narcotics Enforcement or the CANF Task Force. The Board's investigation revealed that on numerous occasions, Dr. Walker-Graham dispensed these drugs without performing a medical examination. The Board's ruling was also based in part upon an accountability audit conducted by the Ohio State Board of Pharmacy which revealed that Dr. Walker-Graham could not account for significant shortages of phentermine that was used in her medical practice from January 1, 1997 through November 4, 1998. As part of the Board's revocation order, Dr. Walker-Graham was further ordered to immediately cease prescribing, dispensing, or administering controlled substances.

The Deputy Administrator's review of the investigative file further reveals that on January 10, 2001, Dr. Walker-Graham was convicted on felony charges related to drug trafficking, sale of dangerous drugs and drug possession. She was sentenced five years of court supervised probation, her driver's license was suspended and she was ordered to pay a fine.

There is no evidence before the Deputy Administrator that Dr. Walker-Graham's license to practice medicine in the State of Ohio has been reinstated. The Deputy Administrator further notes that the Board's revocation order prohibits Dr. Waker-Graham from prescribing, dispensing, or administering controlled substances.

Pursuant to 21 U.S.C. 824(a), the Deputy Administrator may revoke a DEA Certificate of Registration if he finds that the registrant has been convicted of a felony related to controlled substances, has had his State license revoked and is no longer authorized to dispense controlled substances or has committed such acts as would render his registration contrary to the public interest as determined by factors listed in 21 U.S.C. 823(f). Thomas B. Pelkowski, D.D.S., 57 FR 28538 (1992). Despite Dr. Walker-Graham's felony conviction related to controlled substances, as well as the other public interest factors for the revocation of her DEA registration asserted herein, the more relevant consideration here is the present status of her State authorization to handle controlled substances.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances in the State in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Joseph Thomas Allevi, M.D., 67 FR 35581 (2002); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Walker-Graham is not licensed to handle controlled substances in Ohio, where she is registered with DEA. Therefore, she is not entitled to maintain that registration. Because Dr. Walker-Graham lacks State authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address whether her DEA registration should be revoked based upon the public interest grounds asserted in the Order to Show Cause, or whether her registration should be revoked based upon the aforementioned felony conviction in the State of Ohio. *See* Samuel Silas Jackson, D.D.S., 67 FR 65145 (2002); National-Aikens-Afful, M.D., 62 FR 16871 (1997); Sam F. Moore, D.V.M, 58 FR 14428 (1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BW2846256, issued to Fereida Walker-Graham, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective June 9, 2003.

Dated: April 21, 2003.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 03–11434 Filed 5–07–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: New Semi-Annual Progress Report for the Legal Assistance for Victims Grant Program.

The Department of Justice (DOJ), Office on Violence Against Women 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 July 7, 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 Cynthia J. Schwimer, Comptroller (202) 307–0623, Office of Justice Programs, US Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for the Legal Assistance for Victims Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the approximately 200 grantees of the Legal Assistance for Victims Grant Program (LAV Program) whose eligibility is determined by statute. In 1998, Congress appropriated funding to provide civil legal assistance to domestic violence victims through a set-aside under the Grants to Combat Violence Against Women, Public Law 105–277. In the Violence Against Women Act of 2000, Congress statutorily authorized the Legal Assistance for Victims Grant Program (LAV Program). 42 U.S.C. 3796gg–6. The LAV Program is intended to increase the availability of legal assistance necessary to provide effective aid to victims of domestic violence, stalking, or sexual assault who are seeking relief in legal matters arising as a consequence of that abuse or violence. The LAV Program awards grants to law school legal clinics, legal aid or legal services programs, domestic violence victims' shelters, bar associations, sexual assault programs, private nonprofit entities, and Indian tribal governments. These grants are for providing direct legal services to victims of domestic violence, sexual assault, and stalking in matters arising from the abuse or violence and for providing enhanced training for lawyers representing these victims. The goal of the Program is to develop innovative, collaborative projects that provide quality representation to victims of domestic violence, sexual assault, and stalking.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the approximately 200 respondents (LAV Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities that grantees may engage in and the different types of grantees that receive funds. An LAV Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the data collection forms is 400 hours, that is 200 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: May 2, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–11410 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Extension of a currently approved collection; Bulletproof Vest Partnership.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 7, 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 Robert Watkins, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of a currently approved.

(2) *The title of the form/collection:* Bulletproof Vest Partnership.

(3) *The agency for number, if any, and the applicable component of the Department sponsoring the collection:* None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local or Tribal governments, The Department's Office of Justice Programs has decided to extend the information collection 1121–0235 titled ''Bulletproof Vest Partnership'' (BVP). The Bulletproof Vest Partnership Grant Act of 1998 authorizes the Bureau of Justice Assistance to provide funds to Indian Tribes and State and Local governments to assist them with purchasing armor vests that meet the standard, established by the National Institute of Justice, for law enforcement officers as defined in the Act. This collection will provide funds to these eligible jurisdictions.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that between 25,000 and 30,000 eligible units of general government may complete the Registration and Application for Funding forms that may take one hour during one Fiscal Year, and may complete any number of Requests for Payment forms that may take as much as one hour total per Fiscal Year to complete as armor vests

are received accepted and Requests for Payment are made to the BVP.

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated range of annual public burden hours is 125,000 and 150,000.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: April 30, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–11417 Filed 5–7–03; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board; Meeting

AGENCY: National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and a summary of the agenda for an upcoming meeting of the National Institute for Literacy Advisory Board (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or materials in alternative format) should notify Liz Hollis at telephone number (202) 233–2072 no later than May 14. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

DATE AND TIME: Open sessions—May 22, 2003, from 8:30 am to 3:30 p.m. and May 23, 2003, from 8:30 a.m. to 4 p.m. Closed session—May 22, 2003, from 3:30 p.m. to 5 p.m.

ADDRESSES: National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Liz Hollis, Special Assistant to the Director; National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006; telephone number: (202) 233–2072; email: *ehollis@nifl.gov.*

SUPPLEMENTARY INFORMATION: The Board is established under section 242 of the Workforce Investment Act of 1998, Pub. L. 105–220 (20 U.S.C. 9252). The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board advises and makes recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in implementing any programs to achieve those goals. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Institute's Director.

The National Institute for Literacy Advisory Board meeting on May 22–23, 2003, will focus on future and current program activities, reauthorization of the Workforce Investment Act, and other relevant literacy activities and issues. On May 22 from 3:30 p.m. to 5 p.m., the meeting will be closed to the public to discuss personnel issues. This discussion relates to the internal personnel rules and practices of the Institute and is likely to disclose information of personal nature where disclosure would constitute a clearly unwarranted invasion of personnel privacy. The discussion may therefore be held in closed session under exemptions 2 and 6 of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6). A summary of the activities at the closed session and related matters that are informative to the public and consistent with the policy of 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Records are kept of all Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, from 8:30 a.m. to 5 p.m.

Dated: May 2, 2003.

Sandra Baxter,

Interim Director.

[FR Doc. 03–11408 Filed 5–7–03; 8:45 am]

BILLING CODE 6055–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Policy Statement on Cooperation with States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities.

2. *Current OMB approval number:* 3150–0163.

3. *How often the collection is required:* On occasion—when a State wishes to observe NRC inspections or perform inspections for NRC.

4. *Who is required or asked to report:* Those States interested in observing or performing inspections.

5. *The number of annual respondents:* Maximum of 50, although not all States have participated in the program.

6. *The number of hours needed annually to complete the requirement or request:* An average estimate of 10 hours per State or 500 hours if all States participated in the program.

7. *Abstract:* States wishing to enter into an agreement with NRC to observe or participate in NRC inspections at nuclear power facilities are requested to provide certain information to the NRC to ensure close cooperation and consistency with the NRC inspection program as specified by the Commission's Policy of Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities.

Submit, by July 7, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated

collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room 0–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *infocollects@nrc.gov.*

Dated at Rockville, Maryland, this 2nd day of May, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–11439 Filed 5–7–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 11a–3 (17 CFR 270.11a–3), SEC File No. 270–321, OMB Control No. 3235–0358

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520], the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 11a–3 under the Investment Company Act of 1940 (17 CFR 270.11a–3) is an exemptive rule that permits open-end investment companies (''funds''), other than insurance company separate accounts, and funds' principal underwriters, to make certain exchange offers to fund shareholders and shareholders of other funds in the same group of investment companies. The rule requires a fund, among other things, (i) to disclose in its prospectus and advertising literature the amount of any administrative or redemption fee imposed on an exchange transaction, (ii) if the fund imposes an administrative fee on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years, and (iii) give the funds' shareholders a sixty day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer (unless the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange).

The rule's requirements are designed to protect investors against abuses associated with exchange offers, provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers, and enable the Commission staff to monitor funds' use of administrative fees charged in connection with exchange transactions.

There are approximately 3,075 funds registered with the Commission as of December 31, 2002. The staff estimates that one-quarter of these funds imposes a non-nominal administrative fee on exchange transactions, and that the recordkeeping requirement of the rule requires approximately one hour annually of clerical time (at an estimated $16 per hour) per fund, for a total of 768.75 hours for all funds (at a total annual cost of $12,300). The staff estimates that one-quarter of the 3,075 funds terminates an exchange offer or makes a material change to its terms once each year, and that the notice requirement of the rule requires approximately one hour of professional time (at an estimated $60 per hour) and two hours of clerical time (at an estimated $16 per hour) per fund, for a total of approximately 2306.25 hours for all funds (at a total annual cost of $70,725). The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N–1A registration statement for funds.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are requested on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden[s] of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: April 30, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11411 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (MAI Systems Corporation, Common Stock, $.01 par value) File No. 1–09158

May 2, 2003.

MAI Systems Corporation, a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on March 4, 2003 to withdraw the Issuer's Security from listing on the Amex and to list the

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

Security on the NASDAQ over-the-counter (OTC) Bulletin Board. The Board took such action in the best interest of the Issuer and its shareholders.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(b) of the Act[3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before May 23, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–11445 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26041; File No. 812–12900]

Manufacturers Investment Trust, et al.; Notice of Application

May 1, 2003.

AGENCY: Securities and Exchange Commission (the ''Commission'' or ''SEC'').

ACTION: Notice of Application pursuant to section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an order granting exemption from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(l5) and 6e–3(T)(b)(15) thereunder.

APPLICANTS: Manufacturers Investment Trust (''MIT'') and Manufacturers Securities Services, LLC (''MSS'' or the ''Adviser'') (collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek exemptive relief to the extent necessary to permit shares of existing series of MIT (''Existing Funds'') and shares of Future Funds (as defined below) to be sold to and held by: (1) Separate accounts (''separate accounts'') funding variable life insurance contracts and variable annuity contracts (collectively, ''variable contracts'') issued by both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans (''Qualified Plans'') (as defined below) outside of the separate account context; (3) the investment adviser or any subadviser to an Existing Fund or Future Fund (each, a ''Fund''; collectively, the ''Funds''), certain affiliated persons of each such adviser or subadviser and all other persons described in Treasury Regulation 1.817–5(f)(3)(ii) (collectively, ''Other Investors''); and (4) the general account of any Participating Insurance Company (as defined below), certain affiliated persons of each such Participating Insurance Company and all other persons described in Treasury Regulation 1.817–5(f)(3)(i) (collectively, the ''General Accounts'').

FILING DATE: The Application was filed on November 12, 2002 and amended on April 11, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 29, 2003, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interests, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o John W. Blouch, Esq., Jones & Blouch L.L.P., 1025 Thomas Jefferson St., NW., Suite 410 East, Washington, DC 20007–5252; copy to Betsy A. Seel, Esq., Assistant Vice President and Senior Counsel, Manulife Financial, 73 Tremont St., Boston, MA 02108–3915.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Zandra Y. Bailes, Branch Chief, at (202) 942–0670 (Division of Investment Management, Office of Insurance Products).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Commission's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. *As used herein:* (a) A ''Future Fund'' is any investment company (or series thereof), other than an Existing Fund, that is designed to be sold to separate accounts and for which MSS or any affiliated person of MSS serves as investment adviser, subadviser, manager, administrator, principal underwriter or sponsor; (b) a ''Qualified Plan'' means any trust, plan, account, contract or annuity described in sections 401(a), 403(a), 403(b), 408(a), 408(b), 408(p), 408A, 414(d), 457(b), 408(k), or 501(c)(18) of the Internal Revenue Code of 1986, as amended (the ''Code''), and any other trust, plan, account, contract or annuity that is determined to be within the scope of Treasury Regulation 1.817–5(f)(3)(iii); and (c) a ''Participating Insurance Company'' means any insurance company that purchases or will purchase shares of the Funds to serve as the investment media for variable contracts issued through its separate accounts.

2. MIT is a Massachusetts business trust that is registered as an open-end management investment company under the Act. Under Massachusetts law and MIT's Agreement and Declaration of Trust, MIT is managed by its Board of Trustees. MIT is a series trust comprising sixty-seven Existing Funds, each of which has its own investment objectives and policies. MIT may add additional Funds in the future. Shares of MIT are registered under the Securities Act of 1933, as amended (the ''1933 Act''). Shares of MIT are not offered directly to the public but only to separate accounts of The Manufacturers Life Insurance Company (U.S.A.) (''Manulife USA''), a Michigan stock life insurance company, and The Manufacturers Life Insurance Company of New York (''Manulife New York''), a New York stock life insurance company (collectively, the ''Insurance Companies''), as the underlying investment media for variable contracts issued by such companies. The Insurance Companies are indirect, wholly-owned subsidiaries of The Manufacturers Life Insurance Company, a stock insurance company organized under the laws of Canada (''Manulife''). Manulife Financial Corporation (''MFC''), a publicly-traded company based in Toronto, Canada, is the holding company of Manulife and its subsidiaries, collectively known as

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

Manulife Financial. The separate accounts of the Insurance Companies include both separate accounts that are registered as investment companies under the Act (''registered separate accounts'') and separate accounts that are not registered as investment companies under the Act in reliance on the exemption provided by section 3(c)(11) of the Act.

3. MSS is a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). MSS is an indirect, wholly-owned subsidiary of Manulife USA. MSS currently serves as the investment adviser to MIT with respect to each of the Existing Funds. Pursuant to investment subadvisory agreements, MSS has retained a subadviser for each of the Existing Funds. Each such subadviser is registered as an investment adviser under the Advisers Act.

4. Applicants propose that the Existing Funds and Future Funds be authorized to offer their shares to separate accounts of Participating Insurance Companies in order to serve as the investment media for variable contracts issued through such separate accounts. Each separate account is or will be established as a segregated asset account by a Participating Insurance Company pursuant to the insurance law of such company's domicile. As such, the assets of each are or will be the property of the Participating Insurance Company, and that portion of the assets of such an account equal to the reserves and other contract liabilities with respect to the account is not or will not be chargeable with liabilities arising from any other business that the Participating Insurance Company may conduct. The income, gains and losses, realized or unrealized, from such an account's assets are or will be credited to or charged against the account without regard to other income, gains or losses of the Participating Insurance Company. If a separate account is a registered separate account, it will be a ''separate account'' as defined in Rule 0–1(e) (or any successor rule) under the Act and will be registered as a unit investment trust. For purposes of the Act, the Participating Insurance Company that establishes a registered separate account is the depositor or sponsor of the account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

5. The Funds will sell their shares to registered separate accounts only if the Participating Insurance Company sponsoring such a separate account enters into a participation agreement with the Fund. The participation agreements will define the relationship between each Fund and each Participating Insurance Company and provide that, except where the agreement specifically provides otherwise, the Participating Insurance Company will remain responsible for establishing and maintaining any separate account covered by the agreement and for complying with all applicable requirements of federal and state laws pertaining to such separate accounts and to the sale and distribution of variable contracts issued through such separate accounts. The participation agreements will also provide that the obligations of the Funds with regard to compliance with the federal securities laws will, unless the agreement specifically provides otherwise, relate solely to offering and selling their shares to the separate accounts covered by the agreements.

6. The use of a common management investment company (or series thereof) as an investment medium for both variable life insurance and variable annuity contracts of the same insurance company, or of two or more insurance companies that are affiliated persons of each other, is referred to herein as ''mixed funding.'' The use of a common management investment company (or series thereof) as an investment medium for variable life insurance and variable annuity contracts of two or more unaffiliated insurance companies is referred to herein as ''shared funding.''

7. Applicants propose that Existing Funds and Future Funds be authorized to offer and sell their shares directly to Qualified Plans, Other Investors and General Accounts. As stated above, Qualified Plans are pension or retirement plans within the scope of Treasury Regulation 1.817–5(f)(3)(iii). Other Investors will be persons described in Treasury Regulation 1.817–5(f)(3)(ii) which purchase Fund shares in connection with advances made in connection with the operation of separate accounts. General Accounts will be persons described in Treasury Regulation 1.817–5(f)(3)(i) which, if insurance companies, hold Fund shares in their general accounts.

8. Applicants state that they expect that most of the Qualified Plans will be pension or retirement plans intended to qualify under sections 401(a) and 501(a) of the Code and that many of these Plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under section 401(k) of the Code. The Plans that qualify under sections 401(a) and 501(a) of the Code will also be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), applicable to either defined benefit or defined contribution profit sharing plans, specifically ''Title I—Protection of Employee Benefit Rights.'' These Plans will thus be subject to regulatory provisions under the Code and ERISA regarding, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility and enforcement. Fund shares sold to Qualified Plans will be held by the trustees of such plans as required by section 403(a) of ERISA. Applicants state that pass-through voting is generally not required to be provided to participants in Qualified Plans pursuant to ERISA. Applicants note state that some of the Qualified Plans will not be subject to ERISA. These include governmental plans within the meaning of sections 414(d) or 457(b) of the Code, custodial accounts described in section 403(b) of the Code, and regular and Roth individual retirement accounts (''IRAs'') described in sections 408(a) and 408A of the Code, respectively. Generally, Fund shares sold to governmental plans will be held by trustees, those sold to custodial accounts will be held by custodians, and those sold to IRAs will be held by custodians or trustees on behalf of individual plan owners. Applicants state that pass-through voting is generally not required to be provided to participants in governmental plans, and voting rights in the case of custodial accounts and IRAs are generally exercised by individual participants or owners.

9. Applicants state that the current federal tax law permits the Funds to sell their shares to Qualified Plans, Other Investors and General Accounts. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable contracts held in segregated asset accounts. The Code provides that a variable contract shall not be treated as an annuity or life insurance contract for any period (and any subsequent period) for which the investments, in accordance with regulations prescribed by the Treasury Department, are not adequately diversified. The Treasury Department has issued regulations (Treas. Reg. 1.817–5) (the ''Treasury Regulations'') that establish diversification requirements for the investment portfolios underlying variable contracts. The Treasury Regulations provide that, in order to rely on certain look-through

provisions of the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more insurance companies. The Treasury Regulations, however, also contain certain exceptions to this requirement. One exception allows shares in the investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by insurance company separate accounts. (Treas. Reg. 1.817–5(f)(3)(iii)). A second exception allows shares in the investment company also to be held by the investment manager of the investment company, and certain companies related to the investment manager, in connection with the creation or management of the investment company. (Treas. Reg. 1.817–5(f)(3)(ii)). Finally, a third exception allows shares in the investment company also to be held by the general account of a life insurance company that holds or will hold such shares in a separate account, and by certain companies related to the life insurance company. (Treas. Reg. 1.817–5(f)(3)(i)). These latter two exceptions are available only if: (1) The return on such shares held by the investment manager, the general account or the related company is computed in the same manner as the return on shares held by the separate accounts; and (2) the investment manager, the general account and the related company do not intend to sell such shares to the public. Applicants anticipate that the Other Investors and General Accounts will comply with the provisions of the Treasury Regulations when they purchase and hold shares of the Funds.

10. Applicants state that, as a result of these exceptions to the general diversification requirement, Qualified Plans may select the Funds as investment options, and the Other Investors and General Accounts may also hold shares of the Funds, without endangering the tax status of variable contracts issued through the separate accounts of Participating Insurance Companies.

11. The use of a common management investment company (or series thereof) as an investment medium for variable life insurance and variable annuity separate accounts and for Qualified Plans is referred to herein as ''extended mixed and shared funding.''

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e-2(b)(15) under the Act provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the Act. Section 9(a) provides that it is unlawful for any company to serve as an investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e-2(b)(15)(i) and (ii) provide partial exemptions from section 9(a), and Rule 6e-2(b)(15)(iii) provides a partial exemption from sections 13(a), 15(a), and 15(b) to the extent those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares.

2. The exemptions granted to a registered variable life insurance separate account by Rule 6e–2(b)(15) are available only when all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'', and then only when scheduled premium variable life insurance contracts are issued through variable life insurance separate accounts. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying management company that also offers its shares (i) to a separate account of the same or an affiliated insurance company to fund variable annuity contracts or flexible premium variable life insurance contracts or (ii) to any separate account of an unaffiliated life insurance company. Furthermore, Rule 6e–2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans, Other Investors and General Accounts.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–3(T)(b)(15) under the Act provides partial exemptions from section 9(a), and from sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections have been deemed by the Commission to require pass-through voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only when all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company offering either scheduled [premium variable life insurance] contracts or flexible [premium variable life insurance] contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account.'' Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account, subject to certain conditions. Rule 6e–3(T), however, does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium life insurance separate accounts) of unaffiliated life insurance companies. In addition, Rule 6e–3(T) does not contemplate sales to Qualified Plans or Other Investors or, except in limited circumstances, General Accounts.

4. Applicants maintain, as discussed below, that there is no policy reason why the sale of Fund shares to Qualified Plans, Other Investors or General Accounts should prohibit or otherwise limit a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(B)(15). Nonetheless, each of Rules 6e–2 and 6e–3(T) specifically provides that the relief granted thereunder is available only where shares of the underlying fund are offered exclusively to insurance company separate accounts (and, in the case of Rule 6e–3(T), to insurance companies for advances made in connection with separate account operations). In this regard, Applicants request exemptive relief to the extent necessary to permit shares of the Funds to be sold to Qualified Plans, Other Investors and General Accounts while allowing the variable life insurance separate accounts of the Participating Insurance Companies to enjoy the benefits of the relief granted by Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

5. Applicants submit that, if the Funds were to sell their shares only to Qualified Plans, Other Investors or General Accounts, no exemptive relief

under Rules 6e–2 and 6e–3(T) would be necessary. The relief provided for under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Qualified Plans, Other Investors, General Accounts or to a registered investment company's ability to sell its shares to such purchasers. Applicants note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by the trustee of a Qualified Plan, by Other Investors or by General Accounts without adversely affecting the ability of shares of the same investment company also to be held by separate accounts of insurance companies in connection with their variable contracts. Applicants submit that the sale of shares of the same investment company both to separate accounts and to Qualified Plans, Other Investors and General Accounts (other than, as permitted by Rule 6e–3(T), for advances in connection with separate account operations) was not contemplated at the time of the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

6. Applicants are not aware of any reason for excluding separate accounts and investment companies engaged in shared funding from the exemptive relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), or for excluding separate accounts and investment companies engaged in mixed funding from the exemptive relief provided under Rule 6e–2(b)(15). Similarly, Applicants are not aware of any reason for excluding separate accounts from the exemptive relief requested because the Funds may also sell their shares to Qualified Plans, Other Investors and General Accounts.

7. Applicants recognize that the reason the Commission did not grant broader relief in the area of mixed and shared funding when the Commission adopted Rule 6e–3(T) is because of the Commission's uncertainty in this area with respect to such issues as conflicts of interest. Applicants believe that the Commission's concern in this area is not warranted. Applicants have concluded that the addition of Qualified Plans, Other Investors and General Accounts as eligible shareholders in the Funds does not increase the risk of material irreconcilable conflicts among the shareholders. Applicants have further concluded that, even if a material irreconcilable conflict involving the Qualified Plans, Other Investors or General Accounts arose, such shareholders, unlike the separate accounts, could simply redeem their shares and make alternative investments.

8. Consistent with the Commission's authority under section 6(c) of the Act to grant exemptive orders to a class or classes of persons and transactions, Applicants request relief for the class consisting of Applicants, the Participating Insurance Companies and their separate accounts investing in the Existing Funds and Future Funds and, to the extent necessary, investment advisers, subadvisers, principal underwriters, managers, administrators and sponsors of the Funds.

9. The Commission has previously granted the exemptive relief requested herein, including the class relief, in the context of mixed and shared funding and extended mixed and shared funding. The Commission has also granted such relief to permit sales of fund shares to investment managers and their affiliates (*i.e.*, Other Investors) and to the general accounts of life insurance companies holding fund shares in their separate accounts and the affiliates of such insurance companies (*i.e.*, General Accounts).

10. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

11. Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) provide, in effect, that the fact that an individual disqualified under section 9(a)(1) or section 9(a)(2) is an officer, director, or employee of an insurance company, or any of its affiliates, would not, by virtue of section 9(a)(3) of the Act, disqualify the insurance company or any of its affiliates from serving in any capacity with respect to an underlying investment company, provided that the disqualified individual did not participate directly in the management or administration of the underlying investment company.

12. Similarly, Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) provide, in effect, that the fact that any company disqualified under section 9(a)(1) or section 9(a)(2) is affiliated with the insurance company would not, by virtue of section 9(a)(3), disqualify the insurance company from serving in any capacity with respect to an underlying investment company, provided that the disqualified company did not participate directly in the management or administration of the investment company.

13. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with section 9. These rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies funding separate accounts. These rules further recognize that it is also unnecessary to apply section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Funds as funding media for variable contracts.

14. Applicants submit that there is no regulatory purpose in extending the section 9(a) monitoring requirements because of mixed or shared funding. The Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Those individuals who participate in the management or administration of the Existing Funds and, it is expected, of any Future Fund, will remain the same regardless of which separate accounts, insurance companies or Qualified Plans use such Funds. Applying the monitoring requirements of section 9(a) because of investment by separate accounts of other insurers would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contract owners. With respect to Qualified Plans, they, unlike separate accounts, are not themselves investment companies and therefore are not subject to section 9(a) of the Act. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of a Fund except by virtue of its holding 5% or more of a Fund's shares. Finally, the relief requested should not be affected by the sale of shares of the Funds to Other Investors or to General Accounts. The eligibility restrictions of section 9(a) will still apply to any officers, directors or employees of Other Investors or Participating Insurance

Companies who participate directly in the management or administration of the Funds.

15. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a registered separate account. Pass-through voting privileges will be provided by Participating Insurance Companies with respect to all variable contract owners so long as the Commission interprets the Act to require pass-through voting privileges for variable contract owners.

16. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations discussed above on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T)). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that, with respect to registered management investment companies whose shares are held by a registered separate account of an insurance company, the insurance company may disregard voting instructions of contract owners if the contract owners initiate any change in such investment company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of the Rules).

17. Rules 6e–2 and 6e–3(T) recognize that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly has recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Therefore, the corresponding provisions of Rule 6e–3(T) (which apply to flexible premium insurance contracts and which permit mixed funding) undoubtedly were adopted in recognition of the same considerations.

18. Applicants state that, in addition, sales of shares of the Funds to Qualified Plans, Other Investors and General Accounts will not have any impact on the relief requested with respect to pass-through voting. Qualified Plans are not registered as investment companies under the Act, and there is no requirement to pass through voting rights to plan participants. For those Qualified Plans covered by ERISA, applicable law expressly reserves voting rights associated with the assets of most Plans to certain specified persons. Under section 403(a) of ERISA, shares of a fund sold to a Qualified Plan covered by ERISA must be held by the trustees of the Plan. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (1) When the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the plan and not contrary to ERISA; and (2) when the authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the two exceptions stated in section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies.

19. When a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held by the Plan unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the Plans in their discretion. Some ERISA-covered Qualified Plans, however, may provide for the trustees, an investment adviser or another named fiduciary to exercise voting rights in accordance with instructions from participants. For Qualified Plans that are not covered by ERISA, voting rights attributable to investment securities held by the Plans are exercised in accordance with the terms of governing plan documents. Such voting rights may be exercised, as under ERISA-covered Qualified Plans, by plan trustees in their discretion or pursuant to instructions from participants, or, in the case of custodial accounts or IRAs, by individual participants or plan owners.

20. When a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract owners and plan investors with respect to voting a Fund's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts of interest with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

21. Even if a Qualified Plan were to hold a controlling interest in a Fund, Applicants do not believe that such control would disadvantage other investors in the Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed and shared funding. Unlike mixed and shared funding, plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

22. When a Qualified Plan does afford plan participants rights to give voting instructions, Applicants see no reason to believe that such participants generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Plans, would vote in a manner that would disadvantage variable contract holders.

23. Other Investors and General Accounts similarly are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of any material irreconcilable conflicts with respect to voting is not present with respect to Other Investors and General Accounts.

24. The prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. When Rule 6e–2 was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. At the time of the adoption of Rule 6e–2, therefore, the Commission staff contemplated underlying funds with public shareholders as well as variable life insurance separate account shareholders. The Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly-available mutual fund and to affect the investment decisions of public shareholders.

25. For reasons unrelated to the Act, however, Internal Revenue Service Revenue Ruling 81–225 (September 25, 1981) effectively deprived most variable annuities funded by publicly-available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly-available mutual funds as investment media for variable contracts (including variable life contracts). Section 817(h) of the Code, in effect, requires that the investments made by variable annuity and variable life insurance separate accounts be ''adequately diversified.'' If a separate account is organized as a unit investment trust that invests in a single fund or series, then the separate account will not be diversified. In this situation, however, section 817(h) of the Code, in effect, provides that the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if ''all of the beneficial interests'' in the underlying fund ''are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts.'' Accordingly, a unit investment trust separate account that invests solely in a publicly-available mutual fund will not be adequately diversified. In addition, any underlying mutual fund, including any fund that sells shares to separate accounts, in effect, would be precluded from selling its shares to the public. Consequently, there will be no public shareholders of the Funds.

26. Applicants state that shared funding by unaffiliated insurance companies does not present any issues that do not already exist when a single insurance company is licensed to do business in several or all states. When insurers are domiciled in different states, it is possible that the particular state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators in other states in which other insurance companies are domiciled. The fact that a single insurer and its affiliates offer their insurance products in different states does not create a significantly different or enlarged problem.

27. Applicants further state that shared funding by unaffiliated insurers is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. For example, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer(s) will be required to withdraw their separate accounts' investment from the relevant Fund.

28. Applicants submit that the rights of an insurance company under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to disregard the voting instructions of contract owners do not raise any issues different from those raised by the authority of state insurance regulators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer may disregard the voting instructions of the contract owners only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

29. A particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contract owner voting instructions. The insurer's action possibly could be different than the determination of all or some of the other insurers (including affiliated insurers) that the voting instructions of contract owners should prevail, and could either preclude a majority vote approving the change or represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the affected Fund's election, to withdraw its separate account's investment from the Fund, and no charge or penalty would be imposed as a result of such withdrawal.

30. Applicants state that there is no reason why the investment policies of the Funds would or should be materially different from what these policies would or should be if the Funds funded only variable annuity contracts or variable life insurance policies, whether flexible or scheduled premium policies. Each type of insurance product is designed as a long-term investment program. The Funds will not be managed to favor or disfavor any particular Participating Insurance Company or type of variable contract. There is no reason to believe that different features of various types of contracts, including the ''minimum death benefit'' guarantee under certain variable life insurance and variable annuity contracts, will lead to different investment policies for different types of variable contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the differing insurance charges imposed, in effect, adjust any such differences and equalize the insurer's exposure in either case. No one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the continuation of the Existing Funds and will facilitate the establishment of Future Funds serving diverse goals.

31. Applicants do not believe that the proposed sale of shares of the Funds to Qualified Plans, Other Investors and General Accounts will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In considering the appropriateness of the requested relief, Applicants have

analyzed a number of issues as discussed below to assure themselves that there are either no conflicts of interest or that there will exist the ability of affected parties to resolve the issues without harm to the contract owners in the separate accounts, the participants under the Qualified Plans, the Other Investors or the General Accounts.

32. Applicants considered whether any issues are raised under the Code or the Treasury Regulations or Revenue Rulings thereunder if Qualified Plans, Other Investors, General Accounts, variable annuity separate accounts and variable life insurance separate accounts all invest in the same underlying Fund. As discussed above, section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in an underlying mutual fund. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

33. Treasury Department Regulations issued under section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which permits shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817–5(f)(3)(iii)). A second such exception permits the investment manager and related companies also to invest in the underlying fund. (Treas. Reg. 1.817–5(f)(3)(ii)). A third such exception permits the general accounts of insurance companies, and related companies, also to invest in the underlying fund. (Treas. Reg. 1.817–5(f)(3)(i)). Thus, Treasury Regulations specifically permit qualified pension and retirement plans, investment managers and certain affiliates, insurance companies and certain affiliates and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code nor the Treasury Regulations or Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, Other Investors, General Accounts, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

34. Applicants note that, while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, the tax consequences of distributions from variable contracts and Qualified Plans do not raise any conflicts of interest with respect to the use of the Funds. When distributions are to be made, and the separate account or the Qualified Plan cannot net purchase payments to make the distributions, the separate account or the Qualified Plan will redeem shares of the affected Funds at their respective net asset values. The Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan. The life insurance company will surrender values from the separate account in order to make distributions in accordance with the terms of the variable contract.

35. Moreover, there is analogous precedent for a situation in which the same funding vehicle was used for contract owners subject to different tax rules, without any apparent conflicts. Prior to the Tax Reform Act of 1984, a number of insurance companies offered variable annuity contracts on both a qualified and non-qualified basis through the same separate account. Underlying reserves of both qualified and non-qualified contracts therefore were commingled in the same separate accounts. A long-term capital gains tax was incurred in such separate accounts with respect to the reserves underlying non-qualified contracts but not with respect to the reserves underlying qualified contracts. A tax reserve at the estimated tax rate was established in the separate accounts affecting only the non-qualified reserves. To the best of Applicants' knowledge, this practice was never found to have violated any fiduciary standards. Accordingly, Applicants have concluded that the tax consequences of distributions with respect to separate accounts and Qualified Plans do not raise any material irreconcilable conflicts of interest with respect to the use of a Fund.

36. Applicants considered whether, and believe that, it is possible to provide an equitable means of giving voting rights to separate account contract owners, Qualified Plans, Other Investors and General Accounts. In connection with any meetings of shareholders, each Fund or its transfer agent will inform each shareholder, including each Participating Insurance Company (with respect to each of its separate accounts and its general account), Qualified Plan, Other Investor and General Account of its share ownership in the Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable. So long as the Commission interprets the Act as requiring Participating Insurance Companies to pass-through voting privileges to variable contract owners whose contracts are funded through registered separate accounts, each Participating Insurance Company will vote shares of a Fund held in its separate accounts in a manner consistent with voting instructions timely-received from contract owners and will vote shares of the Fund held in its separate accounts for which no voting instructions from contract owners are timely-received, as well as shares of the Fund which the Participating Insurance Company itself owns, in the same proportion as those shares of the Fund for which voting instructions from contract owners are timely-received. MSS and its affiliates will vote their shares of a Fund in the same proportion as all variable contract owners having voting rights with respect to the relevant Fund or in such manner as may be required by the Commission or its staff. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights that are provided to Qualified Plans with respect to Fund shares would be no different from the voting rights that are provided to Qualified Plans with respect to shares of publicly-available funds.

37. Applicants considered whether a ''senior security,'' as such term is defined under section 18(g) of the Act, is created with respect to any variable contract owner as opposed to a plan participant under a Qualified Plan, an Other Investor or a General Account. Applicants concluded that the ability of the Funds to sell their shares directly to Qualified Plans, Other Investors and General Accounts does not create a senior security. A ''senior security'' is defined under section 18(g) of the Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' Applicants submit that, regardless of the rights and benefits of participants under Qualified Plans or contract owners under variable contracts, the Qualified Plans, separate

accounts, Other Investors and General Accounts have rights only with respect to their respective shares of the Fund. They only can redeem such shares at net asset value. No shareholder of a Fund has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

38. Applicants considered whether there are any conflicts between the contract owners of separate accounts and the participants under Qualified Plans, the Other Investors or the General Accounts with respect to the state insurance commissioners' veto powers (direct with respect to variable life and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is that not all shareholders agree with a particular proposal. This does not mean that there are any inherent conflicts of interest between shareholders. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one fund and invest in another. Time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. On the other hand, the trustees of Qualified Plans can quickly make the decision to redeem and then implement the redemption of their plans' shares from the Funds and reinvest in another funding vehicle without the same regulatory impediments, or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants have concluded that, even if there should arise issues where the interests of contract owners and Qualified Plans are in conflict, these issues can be resolved almost immediately in that the trustees of the Qualified Plans can, on their own, redeem shares out of the Funds. Other Investors and General Accounts can similarly redeem their shares out of the Funds and make alternative investments at any time.

39. Finally, Applicants considered whether there is a potential for future conflicts of interest between Participating Separate Accounts and Qualified Plans created by future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contract owners of Participating Separate Accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

40. Applicants submit that permitting the sales of a Fund's shares to Other Investors and General Accounts in compliance with the Treasury Regulations will enhance Fund management without raising significant concerns regarding material irreconcilable conflicts. Section 14(a) of the Act generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares. Initial capital may also be necessary in connection with the creation of new series of shares and the voting of initial shares of such series on matters requiring shareholder approval. Potential sources of initial capital for a Fund are Other Investors or General Accounts. Any of these entities may have an interest in making the capital expenditure and in participating with the Fund in its organization. However, the provision of seed capital or the purchase of Fund shares by Other Investors or General Accounts may be deemed to violate the exclusivity requirements of Rule 6e–2(b)(15) or Rule 6e–3(T)(b)(1) under the Act.

41. Applicants anticipate that such investment in a Fund by Other Investors or General Accounts will be made in compliance with the Treasury Regulations. Given the conditions of Treas. Reg. 1.817–5(f)(3) and the harmony of interest between a Fund, on the one hand, and Other Investors and General Accounts, on the other, Applicants submit that little incentive for overreaching exists. Furthermore, such investment should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Rather, permitting investment by Other Investors or General Accounts will permit the orderly and efficient creation and operation of Funds.

42. Applicants state that various factors have limited the number of insurance companies that offer variable annuity and variable life insurance contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom members of the public feel comfortable entrusting their investment dollars. For example, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own.

43. Applicants believe that the use of the Funds as common investment media for variable contracts, as well as for Qualified Plans, would reduce or eliminate these concerns. Mixed and shared funding, including extended mixed and shared funding, also should provide several benefits to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies and Qualified Plans will benefit not only from the investment and administrative expertise of the Funds' investment advisers and subadvisers, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Funds available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Mixed and shared funding, and extended mixed and shared funding, also will result in a greater amount of assets available for investment by the Funds, thereby benefiting contract owners through greater diversification and by making the addition of Future Funds more feasible.

44. Applicants submit that, regardless of the type of shareholder in any of the Funds, the investment advisers and subadvisers are or will be contractually obligated to manage each Fund solely and exclusively in accordance with that Fund's investment objectives and restrictions as well as with any guidelines established by the Board of Trustees of MIT, or by the board of directors or trustees of any Future Fund that is not a series of MIT, as the case may be (each such board, together with the Board of Trustees of MIT, a ''Board''). With respect to each Fund, the investment advisers and subadvisers work with a pool of money and do not take into account the identity of the shareholders. Thus, the Existing Funds are, and any Future Fund will be, managed in the same manner as any other mutual fund.

45. Applicants see no significant legal impediment to permitting mixed and shared funding and extended mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account, and Applicants believe, as indicated above, that mixed and shared funding and extended mixed and shared funding will have no adverse federal income tax consequences.

46. Applicants note that the Commission has issued numerous orders permitting mixed and shared funding and extended mixed and shared funding as well as permitting sales of fund shares in such context to investment advisers, the general accounts of insurance companies and their affiliates. Applicants' proposal for mixed and shared funding and extended mixed and shared funding as well as sales of fund shares in such context to Other Investors and General Accounts complies in all material respects with the same conditions consented to by the applicants for such orders. Therefore, granting the exemptions requested herein is in the public interest and, as discussed above, will not compromise the regulatory purposes of sections 9(a), 13(a), 15(a), or 15(b) of the Act or Rules 6e–2 or 6e–3(T) thereunder.

Applicants' Conditions

Applicants consent to the following conditions if the Commission considers them appropriate in granting the order requested herein:

1. A majority of the Board of each Fund will consist of persons (''directors'') who are not ''interested persons'' of that Fund (the ''Disinterested Directors''), as defined by section 2(a)(19) of the Act, and the rules thereunder, as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any director, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the directors; (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. Each Board will monitor each of its Funds for the existence of any material irreconcilable conflict between and among the interests of the contract owners of all separate accounts, the participants under the Qualified Plans, the Other Investors and the General Accounts investing in each such Fund and determine what action, if any, should be taken in response to such conflict. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of its participants.

3. In the event that a Qualified Plan ever should become an owner of 10 percent or more of the assets of a Fund, such Qualified Plan will execute a fund participation agreement with that Fund which will include agreement to comply with the conditions set forth herein, to the extent applicable. A Qualified Plan will execute an application with each Fund that contains an acknowledgment of this condition at the time of the Qualified Plan's initial purchase of shares of such Fund.

4. Any Participating Insurance Company (on behalf of itself, its separate accounts, and any of its affiliates investing in a Fund), any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund, and any investment adviser or subadviser to a Fund which is an Other Investor (each on behalf of itself and any of its affiliates (other than a Participating Insurance Company) investing in the Fund) (collectively, the ''Participants'') will report any potential or existing conflicts to the Board of the relevant Fund. The Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard plan participant voting instructions. The responsibility to report such information and conflicts to and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in a Fund under their agreements governing participation in the Funds, and these agreements will provide that these responsibilities will be carried out with a view only to the interests of the contract owners and plan participants, as applicable.

5. If it is determined by a majority of the Board of a Fund, or a majority of its Disinterested Directors, that a material irreconcilable conflict exists with respect to that Fund, then the relevant Participant, at its own expense and to the extent reasonably practicable (as determined by a majority of the Disinterested Directors), will take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) In the case of a Participating Insurance Company, withdrawing the assets allocable to some or all of its separate accounts from the Fund and reinvesting such assets in a different investment medium, including another Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* variable annuity contract owners or variable life insurance contract owners of the Participating Insurance Company) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (b) in the case of a Qualified Plan, withdrawing the assets allocable to the Plan from the Fund and reinvesting such assets in a different investment medium, including another Fund; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, or, if applicable, a decision by a trustee of a Qualified Plan to disregard plan participant voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company or Qualified Plan may be required, at the Fund's election, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Funds, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of contract owners and plan participants, as applicable.

For purposes of this Condition 5, a majority of the Disinterested Directors will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event will MIT, any Fund or MSS (or any other investment adviser to a Fund), as relevant, be required to establish a new funding medium for any variable contract. No Participating Insurance Company will be required by this Condition 5 to establish a new funding medium for any variable contract if an offer to do so has been declined by the vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 5 to establish a new funding medium for the Plan if: (a) A majority of its participants materially and adversely affected by the irreconcilable material conflict vote to decline an offer to do so, or (b) pursuant to applicable law and governing plan documents, the Qualified Plan makes such decision without a vote of plan participants.

6. A Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through registered separate accounts so long as the Commission continues to interpret the Act as requiring such pass-through voting privileges. Accordingly, each Participating Insurance Company, where applicable, will vote shares of a Fund held in its separate accounts in a manner consistent with voting instructions timely-received from contract owners. Each Participating Insurance Company will vote shares of a Fund held in its separate accounts for which no voting instructions from contract owners are timely-received, as well as shares of a Fund which the Participating Insurance Company itself owns, in the same proportion as those shares of the Fund for which voting instructions from contract owners are timely-received. Each Participating Insurance Company will be responsible for assuring that each of its separate accounts investing in a Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies investing in that Fund. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in a Fund will be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in that Fund. Trustees of Qualified Plans will vote shares held by Qualified Plans in accordance with applicable law and governing plan documents.

8. As long as the Commission continues to interpret the Act as requiring pass-through voting privileges to be provided to variable contract owners, MSS and any of its affiliates will vote their shares of any Fund in the same proportion as all variable contract owners having voting rights with respect to the relevant Fund or in such other manner as may be required by the Commission or its staff.

9. Each Fund will comply with all provisions of the Act requiring voting by shareholders (which for these purposes, will be the persons having a voting interest in shares of the relevant Fund), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret section 16 of the Act not to require such meetings) or comply with section 16(c) of the Act (although Existing Funds are not, and Future Funds will not be, the type of trust described in the section 16(c) of the Act), as well as with section 16(a) of the Act and, if and when applicable, section 16(b) of the Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

10. Each Fund will notify all Participating Insurance Companies and all Qualified Plans investing in the Fund that disclosure in separate account prospectuses or any Qualified Plan prospectuses or other Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (a) Shares of the Fund may be offered to insurance company separate accounts for both variable annuity and variable life insurance contracts and to Qualified Plans; (b) due to differences in tax treatments and other considerations, the interests of various contract owners participating in the Fund and the interests of Qualified Plans investing in the Fund may conflict; and (c) the Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and determine what action, if any, should be taken in response to any such conflict.

11. If, and to the extent that, Rule 6e–2 and Rule 6e–3(T) under the Act are amended, or proposed Rule 6e–3 under the Act is adopted, to provide exemptive relief from any provision of the Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Funds and/or the Participating Insurance Companies, as appropriate, will take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T) as amended, or Rule 6e–3 as adopted, as such rules are applicable.

12. The Participants, at least annually, will submit to the Board of each relevant Fund such reports, materials, or data as such Board reasonably may request so that the Board may fully carry out the obligations imposed upon it by the conditions contained in this Application, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Qualified Plans to provide these reports, materials, and data to the Board will be a contractual obligation under their agreements governing participation in the Funds.

13. All reports of potential or existing conflicts received by the Board of a Fund, and all action by the Board with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes or other appropriate records of the Board, and such minutes or other records shall be made available to the Commission upon request.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11412 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 23332, May 1, 2003.

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, May 6, 2003, at 10 a.m.

CHANGE IN THE MEETING: Cancellation of meeting.

The Closed Meeting scheduled for Tuesday, May 6, 2003, has been cancelled.

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: May 5, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–11567 Filed 5–6–03; 11:51 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47774; File No. SR–Amex–2003–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Increase the Maximum Size of Equity Orders That May Be Sent Through the Exchange's Order Entry System

April 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 23, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the maximum size of equity orders that may be sent through the Exchange's order entry system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the maximum size of equity orders that may be sent through the Exchange's order entry system is 30,099 shares, and the maximum size of Exchange Traded Fund and Trust Issued Receipts orders is 99,999 shares and 99,900 shares, respectively. The Exchange now proposes to increase the maximum size of equity orders that may be sent through its order entry system to 99,900 shares. The Exchange believes that the proposed increase in the size of system eligible equity orders will benefit investors by giving them an additional method for sending orders to the Amex.

2. Statutory Basis

The increase in the maximum size of equity orders that may be sent through the Exchange's order entry system is consistent with section 6(b)[3] of the Act in general and furthers the objectives of section 6(b)(5)[4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The increase in the maximum size of equity orders that may use the Exchange's order entry system will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed increase in the maximum size of equity orders that may use the Exchange's order entry system.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[5] and subparagraph (f)(5) of Rule 19b–4[6] thereunder because it effects a change in an existing order entry or trading system that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting access to or availability of the system. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2003–32 and should be submitted by May 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11413 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47779; File No. SR–Amex–2003–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Allocation and Performance Evaluation Procedures for Securities Admitted to Dealings on an Unlisted Trading Privileges Basis

May 1, 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 April 2, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for six-months its pilot specialist allocation and performance evaluation rules for securities admitted to dealings on an unlisted trading privileges (''UTP'') basis to permit these rules to remain in effect while the Commission considers permanent approval. The texts of the pilot rules are available at the Office of the Secretary, the principal office of the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and the 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 proposes to extend its specialist allocation and performance evaluation rules for securities admitted to dealings on a UTP basis to permit the Commission to consider the permanent approval of these rules. The Commission approved on a pilot basis, through two independent approval orders, the Exchange's specialist allocation and performance evaluation procedures with respect to securities admitted to trading pursuant to UTP (''Pilots'').[3] Amex Rule 28, ''Allocation of Securities Admitted to Dealings on an Unlisted Trading Privileges (''UTP'') Basis,'' details the Exchange's specialist allocation rules for UTP trading and Amex Rule 29, ''Market Quality Committee'' details the Exchange's specialist performance evaluation rules for UTP trading. The proposed rule change does not alter the operation of either of the Pilots in any way.[4] This filing extends the effective dates of both Amex Rule 28 and Amex Rule 29 until October 5, 2003.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and the provisions of section 6(b)(5) of the Act,[6] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the continued trading of securities on a UTP basis will provide investors with increased flexibility in satisfying their investment needs by providing additional choice and increased competition in markets to effect transactions in the securities subject to unlisted trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition. The proposed rule change, in fact, will tend to enhance competition by providing investors with additional choice and increased competition in markets to effect transactions in securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] 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 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 or the Commission waives such prior notice. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

The Amex has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. Waiving the pre-filing notice and accelerating the operative date will permit the continuous operation of Amex's specialist allocation and performance evaluation rules with respect to the trading of securities pursuant to UTP. Moreover, during the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For a description of the Pilots, *see* Securities Exchange Act Release Nos. 45698 (April 5, 2002), 67 FR 18051 (April 12, 2002), and 46750 (October 30, 2002), 67 FR 67880 (November 7, 2002).

[4] Telephone conference between Bill Floyd-Jones, Associate General Counsel, Amex, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (April 23, 2003). The Exchange's filing contained a detailed description of the Pilots. That description has not been included in this notice because it is duplicative of the descriptions contained in the original approval orders for the Pilots.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

initial operation period of the Pilots, the Commission did not receive any comments, and, the Commission expects the Exchange to request permanent approval of these rules during the Pilot extension period. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[10] The pilot will be effective for six months from April 5, 2003 until October 5, 2003.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex–2003–23 and should be submitted by May 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11443 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

[10] For the 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).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47775; File No. SR–CBOE–2003–05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, by the Chicago Board Options Exchange, Inc. To Prohibit Clearing Firms From Accepting Certain Third-Party Deposits

April 30, 2003.

On February 10, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to 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 establish CBOE Rule 4.21 which would prohibit, with certain exceptions, member firms that clear and carry the accounts of options market makers (''Clearing Firms'') from accepting deposits to such accounts if the check, funds transfer or securities is drawn from a third party's account. The proposed rule change also would establish record retention requirements for the Clearing Firm to follow if it accepts deposits from third parties pursuant to the permitted exceptions. The CBOE filed Amendment No. 1 to the proposal on March 5, 2003. The proposed rule change, as amended, was published for comment in the **Federal Register** on March 28, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds that the rule change is consistent with section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. The rule change establishes a practice that should help to protect Clearing Firms from risks associated with improper transfers of funds and securities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change, as amended, (File No. SR–CBOE–2003–05) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11414 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 47553 (March 21, 2003), 68 FR 15254.

[4] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47767; File No. SR–NSCC–2003–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying Clearing Fund Rules and Procedures

April 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on April 7, 2003, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change eliminates the reference to ''bearer'' bonds in section 1 of NSCC's Rule 4 (Clearing Fund) because bearer bonds have not been issued for some time and consequently are not eligible for deposit with NSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

[1] 15 U.S.C. 78s(b)(1).

rule change. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Prior to this rule change, Rule 4, section 1 of NSCC's Rules and Procedures stated that NSCC, in its discretion, could permit part of a participant's clearing fund deposit to be evidenced by an open account indebtedness secured by ''bearer'' bonds. This proposed rule change eliminates the reference to ''bearer'' bonds because bearer bonds have not been issued for some time now and consequently are not eligible for deposit with NSCC.

NSCC believes that the proposed rule change is consistent with the provisions of section 17A of the Act[3] and the rules and regulations thereunder because it makes a technical change to NSCC's rules to properly reflect the type of bonds eligible for clearing fund purposes and because it constitutes a stated practice with respect to the administration and enforcement of an existing rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[4] and of Securities Exchange Act Rule 19b–4(f)(4)[5] because the proposed rule change effects a change in an existing service that does not adversely affect the safeguarding of securities or funds in NSCC's custody or control and does not significantly affect the respective rights or obligations of NSCC or the persons using the service. At any time within sixty days of the filing of such 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549–0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NSCC–2003–06. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR–NSCC–2003–06 and should be submitted May 29, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11446 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47786; File No. SR–PCX–2003–08]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc., Relating to a One-Year Pilot for Options Intermarket Linkage Fees

May 2, 2003.

On March 11, 2003, the Pacific Exchange, Inc. (''PCX'' 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 amend its fee structure to clarify which fees apply to trades pertaining to the options intermarket linkage (''Linkage'') and to specify that such fees are for a one-year pilot. On March 21, 2003, PCX submitted Amendment No. 1 to the proposed rule change.[3]

The Commission published the amended proposal for comment in the **Federal Register** on March 28, 2003.[4] The Commission received no comments on the proposal. This order approves the proposal rule change, as amended.

Two PCX fees would apply to Linkage trades other than satisfaction orders: A per transaction per contract side fee of $.21; and a $.05 comparison fee. Each of these Linkage-related fees would be implemented as a one-year pilot, expiring on January 31, 2004.

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[5] and, in particular, the requirements of section 6 of the Act.[6] The Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,[7] which requires that the rules of an exchange provide equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated March 18, 2003 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 47560 (March 21, 2003), 68 FR 15257.

[5] 5 In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 6 15 U.S.C. 78f.

[7] 7 15 U.S.C. 78f(b)(4).

believes the one-year pilot will give the Exchange and the Commission the opportunity to evaluate whether these fees are appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change, as amended, is approved on a pilot basis until January 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11442 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47785; File No. SR–Phlx–2003–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Its Rules Regarding the Calculation of Record Dates, Ex-Dividend Dates and Ex-Rights Dates

May 2, 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 April 11, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Phlx. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 817 (''Record Date ''), Phlx Rule 825 (''Ex-dividend Procedure''), Phlx Rule 826 (''Ex-rights Procedure'') and Phlx Rule 831 (''Special Ex-dividend Rulings''). The proposed amendments are intended by the Exchange to update several archaic rules that specify how record dates, ex-dividend dates and ex-rights dates are calculated. Below is the text of the proposed rule change. Proposed deleted text is [bracketed].

* * * * *

Rule 817. Record Date

Rule 817. A company is not permitted to close its stock transfer books for any reason, including the declaration of a dividend. Rather, it must establish a record date for shareholders entitled to a dividend which is at least ten days after the date on which the dividend is declared (declaration date).

[However, in the case of stock issues that do not have transfer facilities in the Philadelphia metropolitan area, the record date shall not be less than such number of additional days (in excess of ten) after the declaration date as is equal to the mailing time (regular mail) between Philadelphia and the city in which the Transfer Agent is located. The requirement for additional time between the declaration date and the record date would also apply in cases where there is an intervening holiday or where the record date falls on a weekend.]

A company is also required to give the Exchange at least ten days notice in advance of a record date established for any other purpose, including meetings of shareholders.

* * * * *

Rule 825. Ex-Dividend Procedure

Rule 825. [In the establishment and announcement of ex-dividend dates, the Exchange proceeds as follows:

(a) The ''ex-dividend'' date established by the Exchange is based on the location of the transfer facilities either in, or nearest to, Philadelphia. Thus, if an issue transfers both in Philadelphia and outside of Philadelphia the ''ex'' date is based on the Philadelphia transfer facilities. If an issue does not transfer in Philadelphia, but transfers in two or more cities outside of that area, the ''ex'' date is based on the location of the transfer facilities closest to Philadelphia.

(b) Transfer Facilities Located in Philadelphia—] Transactions in stocks (except those made for ''cash'') [for which there exists transfer facilities in Philadelphia] are ex-dividend on the second business day preceding the record date. If the record date selected is not a business day, the stock will be quoted ex-dividend on the third preceding business day. ''Cash'' transactions are ex-dividend on the business day following the record date.

[(c) Transfer Facilities Located Outside Philadelphia—The Exchange will establish an ''Ex-dividend'' date for those stocks with transfer facilities only outside Philadelphia predicated on a theoretical ''equivalent Philadelphia record date''. The equivalent Philadelphia record date is the last business day on which securities may be mailed in Philadelphia and reach the out-of-town transfer office, by regular mail, in time to effect transfer by the record date. ''Regular way'' transactions in these stocks are ex-dividend on the second business day preceding the equivalent Philadelphia record date. Transactions in such stocks made for ''cash'' are ex-dividend on the business day following such equivalent Philadelphia record date.

(d) To avoid unnecessary claims for dividends, members receiving deliveries of stocks against ''dividend on'' transactions are urged to provide for the earliest mailing of such stocks which transfer out of town, in order to ensure receipt by the transfer agent by the record date.]

* * * * *

Rule 826. Ex-Rights Procedure

Rule 826. In the establishment and announcement of ex-rights dates, the Exchange proceeds as follows:

Subscription Price Established—Where the Subscription price and all other terms of the rights and subscription offering are established sufficiently in advance of the record date to determine the value of the rights (and the registration statement relating to the offering has been declared effective by the SEC sufficiently in advance of the record date), transactions in stocks to which the rights pertain are quoted ex-rights in a manner similar to that described in Rule 825 above.

Subscription Price Not Known—Where the subscription price and all other terms of the rights and subscription offering are not known sufficiently in advance of the record date to determine the value of the rights, the Exchange will rule the stock ex-rights on the day following the date the rights commence trading (which, in most instances, is a date subsequent to the record date for the subscription offering).

Under such circumstances, the Exchange requires that all deliveries of stock made after the record date [(or ''equivalent Philadelphia record date'', where appropriate)] in settlement of transactions made prior to the ex-rights date, and on a ''rights on'' basis carry ''due bills'' for the rights.

* * * * *

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[8] 15 U.S.C. 78s(b)(2).

[9] 9 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b(f)(6).

Rule 831. Special Ex-Dividend Rulings

Rule 831. If, as required by Exchange rules, the Exchange does not receive a notice of a dividend declaration sufficiently in advance of a record date to permit a stock to be quoted ''ex-dividend'' in the usual manner, the Exchange quotes the stock ''ex-dividend'' as soon as possible following receipt of notice of the dividend. The Exchange also rules that the ''dividend on'' purchaser (in transactions made during the interval between the date when the stock should have been quoted ''ex'' and the date when the stock is actually quoted ''ex'') is entitled to receive the dividend from the seller. The seller in such transactions is required to give to the purchaser a due bill, covering the amount of the dividend, to be redeemed subsequent to the payment date for the dividend.

Larger or Valuable Dividends, Dividends ''Not in Kind'', and Split-ups Effected as Stock Distributions—When large or valuable cash or stock dividends (usually 25% or more), or a dividend ''not in kind'', (*i.e.*, a distribution of securities of another issuer), or a split-up is declared, it is the policy of the Exchange to postpone the ''ex-dividend'' or ''ex-distribution'' date until the dividend has been paid. The reason for this is so that the stock is not quoted at the substantially lower ''ex-dividend'' or ''ex-distribution'' price until the distribution is received by shareholders. If this were not the case, the collateral value of the stock would be reduced between the ''ex'' date and payment date, and the shareholder might be required to provide additional collateral.

In the case of dividends ''not in kind'' (regardless of its size in relation to the listed security), it will be necessary to postpone the ''ex-dividend'' date in the event a market does not exist in the security to be distributed at the time the listed issue would normally be quoted ''ex-dividend''.

In all of the above instances, the postponement of the ''ex'' date until after the payment date makes it possible for shareholders to sell all of their holdings at one time, on a ''dividend on'' basis (prior to the ''ex'' date). As a result of this ruling, purchasers of the stock prior to the ''ex'' date continue to pay a ''dividend on'' price, but will not receive the dividend payment from the company. Accordingly, the Exchange rules that the ''dividend on'' purchaser is entitled to receive the dividend from the seller. The seller, in turn, is required to give the purchaser a due bill, covering the amount of the dividend, to be redeemed on the date fixed by the Exchange.

''Cash'' Transactions—The Ex-Dividend Rule of the Exchange specifies that ''cash'' transactions (in which delivery of the security must be made on the date of the transaction) [in the case of stocks transferring in the Philadelphia Metropolitan area,] shall be ''ex-dividend'' on the business day following the record date[, and in the case of stocks transferring only outside of that area shall be ''ex-dividend'' on the business day following the ''equivalent Philadelphia record date'']. * * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange states that the purpose of the proposed rule change is to amend several archaic rules that specify how record dates, ex-dividend dates and ex-rights dates are to be calculated. Phlx Rules 817, 825, 826 and 831 specify that a longer record date, ex-dividend or ex-rights date, as the case may be, may be used where the issuer has a transfer agent located outside the Philadelphia metropolitan area. Given the current state of communication networks and electronic interaction among issuers, the Exchange, transfer agents and investors, the Exchange believes that these additional time periods are no longer necessary. The Exchange also states that these rules, as amended, are similar to Rules 510, 512, 513 and 521 of the American Stock Exchange, LLC. The proposed changes to the Exchange's rules are discussed below.

Phlx Rule 817. Currently, Phlx Rule 817 provides generally that a company listed on Phlx must establish a record date for shareholders entitled to a dividend, which is at least ten days after the date on which the dividend is declared. For issuers that do not have transfer facilities in the Philadelphia metropolitan area, however, current Phlx Rule 817 provides that the record date may be extended by the time equal to the mailing time between Philadelphia and the city in which the transfer agent is located. Because today most communication among issuers, the Exchange, transfer agents and investors is conducted electronically, the Exchange believes it no longer makes sense to distinguish between issuers with transfer agents located in Philadelphia and those with transfer agents located outside the Philadelphia metropolitan area when calculating a record date. As amended, Phlx Rule 817 will apply a uniform ten-day rule for establishing a record date to all Phlx issuers.

Phlx Rule 825. Similarly, Phlx Rule 825 currently provides that issuers with transfer agent facilities located outside the Philadelphia metropolitan area can have a longer period between the declaration of a dividend and the establishment of an ''ex-dividend'' date. This longer period is based on the time equal to the mailing time between Philadelphia and a transfer facility located outside Philadelphia. Again, since most communications in the securities industry no longer rely on regular mail, the Exchange believes that it is reasonable to put Philadelphia issuers and non-Philadelphia issuers on equal footing when it comes to establishing an ''ex-dividend'' date. As amended, Phlx Rule 825 will uniformly provide that all stock dividends are ''ex-dividend'' on the second business day preceding the record date and all cash dividends are ''ex-dividend'' on the day following the record date.

Phlx Rule 826. Phlx Rule 826 provides that the transactions in stocks to which rights attach are quoted ''ex-rights'' in a manner similar to that described in Phlx Rule 825. This reference to Phlx Rule 825 should remain, subject to the changes to Phlx Rule 825 discussed above. The last paragraph of Phlx Rule 826 is proposed to be amended, however, because of the explicit reference to ''equivalent Philadelphia record date,'' which is being eliminated along with the other geographical references from Phlx Rule 825.

Phlx Rule 831. Phlx Rule 831 repeats the ex-dividend date rule set forth in Phlx Rule 825 as it pertains to cash transactions (*i.e.*, where an issuer pays a dividend in cash). Because Phlx Rule 825 is being amended to eliminate distinctions between Philadelphia and non-Philadelphia issuers, Phlx Rule 831 must also be amended so that the rules are consistent.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with

section 6(b) of the Act[4] in general, and furthers the objectives of section 6(b)(5)[5] in particular, in that it is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by removing outdated provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

I. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7] 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 thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to thirty days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx has requested that the proposed rule change become operative immediately upon filing so that the Exchange may remain competitive with other exchanges with similar rules in effect.

The Commission believes that it is consistent with the protection of investors and the public interest to designate the proposed rule change immediately operative. Accelerating the operative date should permit the Exchange's rules to reflect current business practices.[12] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–24 and should be submitted by May 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–11444 Filed 5–7–03; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240–19b–4(f)(6).

[10] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes of only 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).

[13] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Extension of Clearance

The form described below has been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS Form 22

Title: Claim Documentation Form—Conscientious Objector.

Purpose: Is used to document a claim for classification as a conscientious objector.

Respondents: Registrants who claim to be conscientious objectors.

Frequency: One-time.

Burden: The reporting burden is one hour per individual.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of publication of this notice to the Selective Service System, Reports Clearance Officer, Arlington, Virginia, 22209–2425.

A copy of the comments should be sent to Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20435.

Dated: March 11, 2003.

Lewis C. Brodsky,

Acting Director.

[FR Doc. 03–11463 Filed 5–7–03; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF STATE

[Public Notice 4359]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and

in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the ten letters.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Berry, Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202–663–2700).

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: May 2, 2003.

Terry L. Davis,

Acting Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transactions contained in the attached certification concern future commercial activities with Russia and Kazakhstan related to the Proton Space Launch Vehicle beyond those specified in DTC 001–03 dated January 24, 2003, DTC 147–02 dated July 26, 2002; DTC 182–02 dated June 27, 2002; DTC 124–02 dated May 22, 2002; DTC 022–02 dated May 1, 2002; DTC 038–01 dated April 30, 2001; DTC 034–01 dated March 1, 2001; DTC 014–01 dated March 7, 2000; DTC 098–99 dated August 5, 1999; and DTC 039–98 dated March 19, 1998.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 022–03.

The Honorable Richard G. Lugar,
Chairman Committee on Foreign Relations, United States Senate.

Dear Mr. Chairman: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transactions contained in the attached certification concern future commercial activities with Russia, Ukraine and Norway related to the launch of commercial satellites from the Pacific Ocean utilizing a modified oil platform beyond the period specified in DTC 002–03 dated January 24, 2003; DTC 148–02 dated July 26, 2002; DTC 123–02 dated May 22, 2002; DTC 023–02 dated May 1, 2002; DTC 048–01 dated April 30, 2001; DTC 026–00 dated May 19, 2000; DTC 124–99 dated November 10, 1999; DTC 006–99 dated April 16, 1999; and DTC 016–97 dated July 25, 1997.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 023–03.

The Honorable Richard G. Lugar,
Chairman, Committee on Foreign Relations, United States Senate.

Dear Mr. Chairman: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transition contained in the attached certification concerns exports of technical data and defense services for cooperation in the co-development of Japan's Galaxy Express (formerly J–1) space launch vehicle program beyond the period specified in DTC 003–03.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 024–03.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transition contained in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Jordan for the modernization and upgrade of 1,200 M113A1 vehicles to the M113A2Mk1 Armored Personnel Carrier configuration for the Jordan Armed Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 005–03.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transition contained in the attached certification involves the transfer of export of 132 .50 caliber semi-automatic sniper rifles and associated equipment to the Greek Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 006–02.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives..

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of major defense equipment and defense articles in the amount of $25,000,000 or more.

The transaction contained in the attached certification involves the sale of three S–70B helicopters with enhanced configuration (previously S–70B–6 configuration) to the Government of Greece.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 007–03.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification concerns exports of technical data and defense services to France and its subcontractors in Germany, Switzerland, Sweden, Spain and the United Kingdom for the launch of two commercial communications satellites to be owned and operated by a U.S. firm.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 008–03.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, defense services, and hardware to Germany for the manufacture of components for the Standard Advanced Dewar Assembly II Thermal Imaging System for end-use by the Ministries of Defense in Germany, Switzerland, Belgium, Australia, Canada, Denmark, Greece, Italy, The Netherlands, Norway, Spain, Sweden, and Turkey.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 011–03.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data, defense articles and defense services for demonstration, manufacturing and in-service support phases of the Airborne Electronic Reconnaissance System known as Project EXTRACT for end-use by the United Kingdom Ministry of Defence.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 014–03.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act (AECA), I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification consists of the export of Sentinel radar assemblies and related equipment to the U.S. Armed Forces in Kuwait.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Pursuant to a Presidential delegation of authority, and authority delegated by the Secretary of State under section 36(c) of the AECA, I wish to notify you that the Under Secretary of State for Arms Control and International Security has determined that an emergency exists which requires that the export license pertaining to the proposed transfer will become effective immediately in the national interests of the United States.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

[FR Doc. 03–11464 Filed 5–7–03; 8:45 am]
BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 4360]

Bureau of Oceans and International Environmental and Scientific Affairs; Certifications Pursuant to Section 609 of Public Law 101–162

SUMMARY: On April 30, 2003, the Department of State certified, pursuant to section 609 of Public Law 101–162 (''Section 609''), that 15 nations have adopted programs to reduce the incidental capture of sea turtles in their shrimp fisheries comparable to the program in effect in the United States. The Department also certified that the fishing environments in 24 other countries and one economy, Hong Kong, do not pose a threat of the incidental taking of sea turtles protected under section 609. Shrimp imports from any nation not certified were prohibited effective May 1, 2003 pursuant to section 609.

EFFECTIVE DATE: On Publication.

FOR FURTHER INFORMATION CONTACT: David Hogan, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818; telephone: (202) 647–2335.

SUPPLEMENTARY INFORMATION: Section 609 of Public Law 101–162 prohibits imports of certain categories of shrimp unless the President certifies to the Congress not later than May 1 of each year either: (1) That the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States and has an incidental take rate comparable to that of the United States; or (2) that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the **Federal Register** on July 2, 1999 (Vol. 64, No. 130, Public Notice 3086).

On April 30, 2003, the Department certified 15 nations on the basis that their sea turtle protection program is comparable to that of the United States: Belize, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Mexico, Nicaragua, Nigeria, Pakistan, Panama, Suriname, Thailand, and Trinidad and Tobago.

The Department also certified 24 shrimp harvesting nations and one economy as having fishing

environments that do not pose a danger to sea turtles. Sixteen nations have shrimping grounds only in cold waters where the risk of taking sea turtles is negligible. They are: Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. Eight nations and one economy only harvest shrimp using small boats with crews of less than five that use manual rather than mechanical means to retrieve nets, or catch shrimp in using other methods that do not threaten sea turtles. Use of such small-scale technology does not adversely affect sea turtles. The eight nations and one economy are: The Bahamas, China, the Dominican Republic, Fiji, Hong Kong, Jamaica, Oman, Peru and Sri Lanka.

The Department of State has communicated the certifications under section 609 to the Office of Trade Program of the United States Customs Service.

Dated: May 1, 2003.

David A. Balton,

Acting Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. 03–11465 Filed 5–7–03; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries That Deny Adequate Protection, or Market Access, for Intellectual Property Rights Under Section 182 of the Trade Act of 1974

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Trade Representative (USTR) has submitted its annual report on the identification of those foreign countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection, and those foreign countries determined to be priority foreign coiuntries, to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the United States House of Representatives, pursuant to section 182 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2242).

DATES: This report was submitted on May 1, 2003.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Kira Alvarez, Director for Intellectual Property, (202) 395–6864, or Dan Mullaney, Associate General Counsel or Victoria Espinel, Associate General Counsel at (202) 395–7305.

SUPPLEMENTARY INFORMATION: Section 182 of the Trade Act requires USTR to identify within 30 days of the publication of the National Trade Estimates Report all trading partners that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact (actual or potential) on the relevant United States products must be identified as ''priority foreign countries,'' unless they are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection for intellectual property rights. In identifying countries in this manner, the USTR is directed to take into account the history of intellectual property laws and practices of the foreign country, including any previous identifications as a priority foreign country, and the history of efforts of the United States, and the response of hte foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights. In making these determinations, the USTR must consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, other appropriate officials of the Federal Government and take into account information from other sources such as information submitted by interested persons.

On May 1, 2003, USTR identified 47 trading partners that deny adequate and effective protection of intellectual property or deny fair and equitable market access to United States artists and industries that rely upon intellectual property protection. USTR maintained Ukraine's designation as a Priority Foreign Country, and again designated Paraguay and China for ''Section 306 monitoring'' to ensure both countries comply with the commitments made to the United States under bilateral intellectual property agreements.

USTR also announced placement of 11 trading partners on the ''Priority Watch List'': Argentina, the Bahamas, Brazil, European Union, India, Indonesia, Lebanon, Philippines, Poland, Russia and Taiwan. In addition, USTR placed 36 trading partners on the ''Watch List.'' USTR will conduct an out-of-cycle review of Korea, and review any progress made in Bolivia, Ecuador, Peru and Venezuela, in the fall.

Kira M. Alvarez,

Director for Intellectual Property.

[FR Doc. 03–11440 Filed 5–7–03; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Request for Public Comment on Review of Employment Impact of United States-Australia Free Trade Agreement

AGENCY: Office of the United States Trade Representative. Department of Labor.

ACTION: Request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) gives notice that the Office of the United States Trade Representative (USTR) and the Department of Labor (Labor) are initiating a review of the impact of the proposed U.S.-Australia Free Trade Agreement (FTA) on United States employment, including labor markets. This notice seeks written public comment on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA.

DATE: Public comments should be received no later than June 6, 2003.

ADDRESSES: Submissions by electronic mail: *FR0076@ustr.gov.* Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Substantive questions concerning the employment impact review should be addressed to Jorge Perez-Lopez, Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883.

SUPPLEMENTARY INFORMATION:

1. Background Information

On November 13, 2002, in accordance with section 2104(a)(1) of the Trade Act

of 2002, the United States Trade Representative, Ambassador Robert B. Zoellick, notified Congress of the President's intent to enter into trade negotiations with Australia. Ambassador Zoellick outlined specific U.S. objectives for these negotiations in the notification letters to Congress. Copies of the letters are available at *http://www.ustr.gov/releases/2002/11/2002–11–13-australia-hastert.PDF* and *http://www.ustr.gov/releases/2002/11/2002–11–13-australia-byrd.PDF,* respectively. The TPSC invited the public to provide written comments and/or oral testimony at a public hearing that took place on January 15, 2003, to assist USTR in amplifying and clarifying negotiating objectives for the proposed FTA and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement (67 FR 76431).

Two-way trade between the United States and Australia has grown significantly in the past decade, and totaled more than $19 billion in 2001. The increased access to Australia s market that an FTA would provide would further boost trade in both goods and services, enhancing employment opportunities in both countries. An FTA also would encourage additional foreign investment between the United States and Australia. A free trade agreement with Australia would further deepen the already close cooperation between the United States and Australia in advancing objectives for multilateral negotiations currently underway in the World Trade Organization (WTO).

2. Employment Impact Review

Section 2102(c)(5) of the Bipartisan Trade Promotion Authority Act of 2002, 19 U.S.C. 3802(c)(5), directs the President to ''review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public. USTR and the Department of Labor will conduct the employment reviews through the TPSC.

The employment impact review will be based on the following elements, which are modeled to the extent appropriate after those in EO 13141. The review will be: (1) written; (2) initiated through a **Federal Register** notice soliciting public comment and information on the employment impact of the FTA in the United States; (3) made available to the public in draft form for public comment, to the extent practicable; and (4) made available to the public in final form.

Comments may be submitted on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA. Persons submitting comments should provide as much detail as possible in support of their submissions.

3. Requirements for Submissions

To ensure prompt and full consideration of responses, the TPSC strongly recommends that interested persons submit comments by electronic mail to the following e-mail address: *FR0076@ustr.gov.* Persons making submissions by e-mail should use the following subject line: ''Australia Employment Review.'' Documents should be submitted in WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the character ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the Annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m–12 noon and 1–4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet website (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–11441 Filed 5–7–03; 8:45 am]

BILLING CODE 3190–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–25]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7653.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on May 2, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2003–14668.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought/Disposition: To permit Boeing to issue export airworthiness approvals for Class II and Class III products produced outside the United States. *Grant, 4/24/2003, Exemption No. 7552A.*

Docket No.: FAA–2003–14212.

Petitioner: Honeywell Aerospace Electronic Systems.

Section of 14 CFR Affected: 14 CFR 21.621.

Description of Relief Sought/ Disposition: To permit Honeywell to continue production and support of Technical Standard Order Authorization products made by Baker Electronics, Inc. *Grant, 4/24/2003, Exemption No. 8031.*

[FR Doc. 03–11453 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195: Flight Information Services Communications (FISC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 195 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 195: Flight Information Services Communications (FISC).

DATES: The meeting will be held June 4–5, 2003, starting at 8:30 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 195 meeting. The agenda will include:

- June 4:
  - Open Plenary Session (Welcome and Introductory Remarks, Approval of Agenda, Approval of Minutes, Review of Action Items)
  - Report from Working Group 1
  - Review of Product Registry Document
  - Review of DO–267 Change 1 Draft
- June 5:
  - Review and Progress DO–267 Change 1 Draft
  - Closing Plenary Session (Review Action Items, Discussion of Future Workplan, Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 30, 2003.

Norman T. Fujisaki,

Deputy Director, System Architecture and Investment Analysis.

[FR Doc. 03–11455 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 193/ EUROCAE Working Group 44: Terrain and Airport Databases

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 193/EUROCAE Working Group 44 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 193/ EUROCAE Working Group 44: Terrain and Airport Databases.

DATES: The meeting will be held June 9–13, 2003 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at Jeppesen, 55 Inverness Drive East, Englewood, CO 80112.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.* (2) Mr. James E. Terpstra, Jeppesen, telephone (303) 328–4401.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting. The agenda will include:

- June 9:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda, Review Summary of Previous Meeting)
  - Presentations/Discussions
  - Subgroup 4 (Database Exchange Format)
  - Resolution of Action Items
  - Feature catalogue review

—Aerodrome database
—Terrain database
—Obstacle database

- June 10:
  - Subgroup 4 (Continue previous day activities)
- June 11:
  - Subgroup 4 (Continue previous day activities)
  - Metadata Review
- June 12:
  - Subgroup 4 (Continue previous day activities)
- June 13:
  - Closing Plenary Session (Summary of Subgroup 4, Assign Tasks, Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 30, 2003.

Norman Fujisaki,

Deputy Director, System Architecture and Investment Analysis.

[FR Doc. 03–11456 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2002–12509]

Notice of Public Hearing; Burlington Northern and Santa Fe Railway

The Burlington Northern and Santa Fe Railway has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance and removal of the traffic control system, on the main tracks between milepost 437.2, near Sapulpa, Oklahoma and milepost 579.3, Mill Creek, Oklahoma, on the Texas Division, Creek Subdivision, a distance of approximately 142 miles, associated with the implementation of Track Warrant Control to govern train movements. This block signal application proceeding is identified as Docket No. FRA–2002–12509.

The FRA has issued a public notice seeking comments of interested parties and has conducted its own field investigation in this matter. After examining the carrier's proposal, letters of protest, and the field report, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9 a.m. on Thursday, June 5, 2003, in the Ada City Hall West Annex, 210 West 13th Street, Ada, Oklahoma 74820. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA rules of practice (49 CFR part 211.25), by a representative designated by the FRA.

The hearing will be a non adversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on May 1, 2003.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 03–11448 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2003–15100]

Notice of Informal Safety Inquiry

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of informal safety inquiry; technical conference.

SUMMARY: Pursuant to 49 CFR 211.61, FRA is issuing this document to notify all interested parties that FRA is conducting an informal safety inquiry and technical conference related to the application of safety appliances on passenger equipment. The primary focus of this informal safety inquiry and technical conference is to elicit views and information from interested parties to aid FRA in its safety oversight of existing passenger equipment with safety appliance arrangements that are mechanically affixed to brackets or plates that are welded onto the equipment. FRA intends for this informal inquiry to clarify further both the safety concerns and economic considerations involved in the various approaches available to FRA for addressing this existing equipment. The technical conference may also include a general discussion of the safety issues and practical concerns related to FRA's general prohibition on the weldment of safety appliances and safety appliance brackets or supports.

DATES: *Technical Conference:* A technical conference will be held on the date and at the location listed below to provide interested parties the opportunity to provide information and discuss the safety and economic issues related to the agency's handling of existing passenger equipment with safety appliances that are attached to the vehicles with some form of welded brackets, plates, or direct fixation. The date of the technical conference is as follows: June 17, 2003, at 10 a.m. in Washington, DC.

Comments: In addition to, or in lieu of, participation in the technical conference, interested parties may submit comments and information relevant to the issues identified in this notice or discussed at the technical conference to the address noted below. Such written materials should be received within 30 days after the date of the technical conference, noted above.

ADDRESSES: (1) *Technical Conference:* The technical conference will be held in the Adams Room at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

(2) *Attendance:* Notification to FRA's Docket Clerk must identify the name, address, and telephone number of each participant or attendee at the technical conference. This notification should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, RCC–10, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590.

(3) *Comments:* Anyone wishing to file a comment related to this informal safety inquiry should refer to the FRA docket number (Docket No. FRA–2003–15100). You may submit your comments and related material by only one of the following methods:

(i) By mail to the Docket Management System, United States Department of Transportation, room PL–401, 400 7th Street, SW., Washington, DC 20590–0001; or

(ii) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.* For instructions on how to submit comments electronically, visit the Docket Management System Web site and click on the ''help'' menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif building at the same address during regular business hours. You may also obtain access to this docket on the Internet at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION, CONTACT: Steve Carullo, Safety Specialist, Motive Power and Equipment Division, FRA Office of Safety Assurance and Compliance, RRS–14, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20950 (telephone 202–493–6480), or Thomas Herrmann, Trial Attorney, FRA Office of the Chief Counsel, RCC–10, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20950 (telephone 202–493–6053).

SUPPLEMENTARY INFORMATION: The purpose of the technical conference is to permit the exchange of information and concerns regarding FRA's safety oversight of existing passenger equipment containing safety appliances that are attached to the equipment by some form of weldment, typically the weldment of a bracket or plate to which the safety appliance is then mechanically fastened. Historically, FRA has required that safety appliances be mechanically fastened to the car structure. FRA has also historically required that any brackets or supports applied to a car structure solely for the purpose of securing a safety appliance must be mechanically fastened to the car body. *See* MP&E Technical Bulletin 98–14. FRA's prohibition on the weldment of safety appliances and their supports is based on its longstanding administrative interpretation of the regulatory ''manner of application'' provisions contained in 49 CFR part 231 which require that safety appliances be ''securely fastened'' with a specified mechanical fastener. *See e.g.*, 49 CFR 231.12(c)(4); 231.13(b)(4); 231.14(b)(4) and (f)(4). FRA's prohibition on the welding of safety appliances is based on its belief that welds are not uniform, are subject to failure, and are very difficult to inspect to determine if the weld is broken or cracked. Mechanical fasteners, by contrast, are generally

easily inspectable and tend to become noticeably loose prior to failure.

Generally, FRA's longstanding interpretation of the regulation prohibiting the weldment of safety appliances has not been seriously questioned or opposed since its inception. Virtually all railcars manufactured for use in the United States have their safety appliances and their safety appliance brackets and supports mechanically fastened to the car body, unless a specific exception has been provided by FRA or the regulations. FRA acknowledges that it has permitted the weldment of certain safety appliances or their brackets and supports on locomotives and tanks cars. *See* MP&E Technical Bulletins 98–48 and 00–06. Although, FRA intends for this safety inquiry and technical conference to address and discuss FRA's general prohibition on the weldment of safety appliances or their supports, FRA expects the primary focus of this proceeding to be specifically directed at the safety and economic implications related to the continued operation or modification of existing passenger equipment with welded safety appliances or safety appliance brackets or supports.

Although FRA has remained consistent in its prohibition on the weldment of safety appliances and their supports, some passenger equipment has been manufactured and used in revenue service for a number of years with safety appliances being attached to the car body with some form of weldment. Currently, FRA is aware of approximately 1,000 passenger cars or locomotives that have safety appliances or safety appliance brackets or supports welded to the body of the equipment. Some units of this equipment were introduced into service within the last few years; others have been in service for more than a decade. Some of the 1,000 units noted above have been the subject of formal waiver requests pursuant to the provisions contained in 49 CFR part 211. *See* FRA Docket Nos. 2000–8588 and 2000–8044. Although FRA's Safety Board has issued determinations in these two instances, FRA intends to stay those decisions until the completion of this informal safety inquiry. Based on its review of the information gathered during this inquiry and any other relevant information, FRA's Safety Board may reaffirm its previous decisions in these two waiver proceedings or modify them as necessary.

Based on the foregoing information, FRA expects the focus of the discussions at the technical conference and written comments submitted in connection with this informal safety inquiry to include the following issues:

- The safety implications related to the continued use of existing passenger equipment with welded safety appliances or supports;
- Criteria for determining when an existing piece of passenger equipment with a welded appliance or support is defective or unsafe or both;
- The economic implications of any type of modification program on the subject cars;
- Alternative approaches to mandatory modification of existing equipment (*e.g.*, notification of when the appliances become or replacement of the appliances when they become defective; mid-life over-hauls) and the economic implication of any suggested approach;
- The safety implications and standards that should and could be addressed, were FRA to reconsider its long-standing administrative interpretation related to the weldment of safety appliances and their supports, such as:

—What part or parts of an appliance should FRA allow to be welded (*e.g.*, just brackets and supports)?
—To what base structure or material should these have to be welded (*e.g.*, structural member, car sheathing)?
—What quality control standards should apply to the welding process?
—What qualifications/training should the individual performing the welding need to possess?
—How should field or shop repairs or both be conducted on equipment with welded safety appliances or supports?
—What are the safety implications of allowing such repairs?
—When should a weld be considered defective?
—What visual and non-destructive inspection techniques are appropriate for welds?
—At what interval should welds be inspected?
—What records, if any, should be maintained of these inspections?

- Other relevant issues or information.

Public Participation Procedures

Any person wishing to attend the technical conference should notify FRA's Docket Clerk by mail at the address provided in the **ADDRESSES** section at least five working days prior to the date of the meeting and submit three copies of the issues or materials they wish to present at the conference. The notification should identify the party the person represents, and the particular subject(s) the person plans to address. The notification should also provide the Docket Clerk with the participant's mailing address. FRA reserves the right to limit participation in the conference of persons who fail to provide such notification.

Issued in Washington, DC, on May 2, 2003.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 03–11457 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket No. FRA–2003–14647]

Applicant: Burlington Northern and Santa Fe Railway, Mr. William G. Peterson, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106.

Burlington Northern and Santa Fe Railway (BNSF) seeks approval of the proposed modification of the traffic control system on the single main track at South Joe, Texas, milepost 633.11, Texas Division, Madill Subdivision, consisting of the replacement of the power-operated switch with an electrically locked hand-operated switch, and removal of all associated controlled signals.

The reason given for the proposed changes is that the switch is at one end of what was a 4,500 foot connecting track between the Union Pacific Railroad (UP) and the BNSF. A derailment destroyed the UP switch, after which UP straight-railed their track, leaving approximately 2,200 feet of the BNSF connection. BNSF is using the track for storage and the control point is no longer needed.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on April 28, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–11449 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34338]

Metro Regional Transit Authority—Acquisition Exemption—Certain Assets of Akron Barberton Cluster Railway Company

Metro Regional Transit Authority (METRO),[1] a regional transit authority, has filed a notice of exemption under 49 CFR 1150.31, *et seq.,* to acquire from Akron Barberton Cluster Railway Company (ABC) certain assets of a line of railroad extending between approximately milepost 11.49 in Akron, OH, and approximately milepost 8.00 in Cuyahoga Falls, OH, a distance of approximately 3.49 miles in Summit County, OH. ABC will retain an exclusive freight railroad operations easement on the subject line.

The transaction was scheduled to be consummated on or after April 21, 2003 (7 days after the notice was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34338, 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 Edward J. Fishman, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, Second Floor., Washington, DC 20036, and John M. Coyne, III, Esq., Roetzel & Andress, 222 South Main Street, Akron, OH 44308.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: April 30, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–11309 Filed 5–7–03; 8:45 am]

BILLING CODE 4915–00–P

[1] METRO indicates that it will file a motion to dismiss its notice of exemption in this case to obtain a jurisdictional determination regarding its prospective common carrier status with respect to the line. That motion will be addressed in a subsequent decision.

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics; Notice of Meeting

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

This notice announces, pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72–363; 5 U.S.C. app. 2), a meeting of the BTS Advisory Council on Transportation Statistics (ACTS). The meeting will be held on June 2, 2003, from 10 a.m. to 4 p.m. The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington DC, on the 6th Floor, in Conference Room 6200 of the Nassif Building.

The ACTS, established under section 6007 of Public Law 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the BTS are of high quality and are based upon the best available objective information.

The following is a summary of the meeting's agenda: (1) Welcome and Introductory Remarks; (2) Overview of Agenda Items; (3) Freight Statistics; (4) Travel Statistics; (5) Airline Data; (6) Transportation Economics; (7) Transportation Geo-spatial Data; (8) System Performance; (9) Methods and Standards; (10) New Indicators and (11) Public Comments and Closing Remarks.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Phyllis Seville, the Committee Management Officer at (202) 366–9510 prior to May 29, 2003. Individuals attending the meeting must report to the SW Lobby of the Nassif Building for admission to the building. Attendance is open to the public, but limited space is available. With the approval of the Chair, members of the public may present oral statements at the meeting. Non-committee members wishing to present oral statements or obtain information should also contact Ms. Seville.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, Attention: Ms. Laura McClure, Designated Federal Officer, BTS, Room 3103, 400 Seventh St. SW., Washington DC 20590 or faxed to (202) 366–3640, Attention: Ms. Laura McClure. BTS requests that written comments be submitted prior to the meeting.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Seville at (202) 366–9510 at least seven calendar days prior to the meeting.

Notice of this meeting is provided in accordance with the FACA and the General Service Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on May 2, 2003.

Rick Kowalewski,

Acting Director, Bureau of Transportation Statistics.

[FR Doc. 03–11451 Filed 5–7–03; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 1, 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 June 9, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1364.

Regulation Project Number: INTL–372–88 Final and INTL–401–88 Final.

Type of Review: Extension.

Title: INTL–372–88 Final: Section 482 Cost Sharing Regulations; and

INTL–401–88 Final: Intercompany Transfer Pricing Regulations under section 482.

Description: INTL–372–88 Final: The information will be used to determine whether an entity is an eligible participant of a qualified cost sharing arrangement and whether each eligible participant is haring the costs and benefits of intangible development on an arm's length basis. INTL–401–88 Final: This document contains regulations relating to the pricing transfers of tangible property, intangible property, or services between related parties.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 7 hours, 51 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 7,850 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 03–11468 Filed 5–7–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6781

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6781, Gains and Losses From Section 1256 Contracts and Straddles.

DATES: Written comments should be received on or before July 7, 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 Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Gains and Losses From Section 1256 Contracts and Straddles.

OMB Number: 1545–0644.

Form Number: Form 6781.

Abstract: Form 6781 is used by taxpayers in computing their gains and losses on Internal Revenue Code section 1256 contracts under the marked-to-market rules and gains and losses under Code section 1092 from straddle positions. The data is used to verify that the tax reported accurately reflects any such gains and losses.

Current Actions: There are no changes being made to Form 6781 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 17 hrs. 16 min.

Estimated Total Annual Burden Hours: 1,727,000.

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 29, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–11488 Filed 5–7–03; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
May 8, 2003

Part II

Department of the Treasury

Fiscal Service

31 CFR Part 315, et al.
Regulations Governing Treasury Securities, New Treasury Direct System; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 315, 351, 353, 359, 360, and 363

Regulations Governing Treasury Securities, New Treasury Direct System

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: We recently implemented a new book-entry, online system for purchasing, holding and conducting transactions in Treasury securities. The system is known as New Treasury Direct.

At its initial implementation, the only Treasury security that could be held in New Treasury Direct was the book-entry Series I savings bond. We are now adding the book-entry Series EE savings bond to the system. We revised the regulations governing book-entry Treasury securities held in the New Treasury Direct system by adding the Series EE savings bond to the subpart dealing with the Series I savings bond. This subpart now covers both Series I and Series EE book-entry savings bonds.

We revised the offering of United States savings bonds of Series EE to provide for the book-entry Series EE savings bond. We changed the purchase limitation for definitive Series EE bonds from face amount to principal amount, for consistency with the purchase limitation for book-entry Series EE savings bonds, and with book-entry and definitive Series I bonds. We extended the original maturity period of Series EE savings bonds from 17 years to 20 years. We also rewrote the regulations in plain language.

We revised the governing regulations for United States savings bonds of Series EE to make it clear that these regulations only apply to definitive Series EE savings bonds. We revised the governing regulations for Series E, H, EE, HH, and I savings bonds to streamline the handling of bonds belonging to a decedent's estate, and to make the estate provisions consistent with those for book-entry bonds.

DATES: Effective May 8, 2003.

ADDRESSES: You can download this final rule at the following Internet address: *http://www.publicdebt.treas.gov.*

FOR FURTHER INFORMATION CONTACT:

Elisha Whipkey, Director, Division of Program Administration, Office of Securities Operations, Bureau of the Public Debt, at (304) 480–6319 or *elisha.whipkey@bpd.treas.gov.*

Susan Klimas, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *susan.klimas@bpd.treas.gov.*

Dean Adams, Assistant Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *dean.adams@bpd.treas.gov.*

Edward Gronseth, Deputy Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *edward.gronseth@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

Public Debt recently developed a new account-based, online, book-entry system for purchasing, holding, and conducting transactions in Treasury securities via the Internet. The new system is known as New Treasury Direct.

Upon the initial implementation of the system in October 2002, only book-entry Series I savings bonds were offered through New Treasury Direct.

We will now offer book-entry Series EE savings bonds through the New Treasury Direct system.

We will continue to offer definitive Series EE savings bonds for some period of time.

The book-entry Series EE savings bond will benefit the investor by expanding the choices available within the New Treasury Direct system. The investor will be able to purchase and conduct transactions in Series EE savings bonds using his or her New Treasury Direct account using the Internet. The system will eliminate the paperwork burden inherent in the purchase of definitive Series EE savings bonds.

The book-entry Series EE savings bond will benefit the government by providing a cost-effective and efficient processing environment, thereby reducing processing costs to Treasury.

The offering circular for Series EE savings bonds is being amended to provide for the offering of the book-entry EE bond, and has also been rewritten in plain language. The offering circular is also being amended to change the original maturity period for both definitive and book-entry Series EE savings bonds from 17 years to 20 years. This change is being done because of the provision in the regulations that provides that a Series EE bond is worth its full face amount at original maturity. The effect of extending the original maturity period is to lower the minimum interest rate that is guaranteed at final maturity.

Both definitive and book-entry Series EE savings bonds will earn interest in the same manner. Both remain accrual bonds with interest payable only at redemption. However, the definitive Series EE savings bond continues to be sold at one-half of the face amount, while the book-entry Series EE savings bond will be have a face amount equal to the amount at which it is sold.

The limitation on purchases for the principal amount of a definitive Series EE savings bond is now $30,000 per calendar year, making it consistent with the limitation on purchases for the book-entry Series EE bond, and both book-entry and definitive Series I savings bonds, which is $30,000 per calendar year, par amount. We also changed the manner in which the computation of the amount limitation is made. Previously, bonds purchased by a person as a coowner could be apportioned between the first and second-named coowners. This change requires that all bonds purchased by a person as first-named coowner be counted in the amount limitation, regardless of who is named as second-named coowner. This has the effect of removing a loophole in the amount limitation, in which a person could purchase more than the annual limitation by naming several other individuals as coowners and apportioning the amount limitation among the other coowners.

We revised the purchase limitation for Series I savings bonds from per New Treasury Direct account to per person. This change will eliminate the possibility of circumventing the amount limitation by opening more than one New Treasury Direct account, and purchasing the maximum amount per account.

Registration options of the definitive and book-entry Series EE bond differ in many respects. The terms and conditions for the book-entry Series EE savings bond will be similar to the terms and conditions of the book-entry Series I savings bond.

Like the book-entry Series I savings bond, the forms of registration for book-entry Series EE savings bonds are single owner, primary owner with secondary owner, and owner with beneficiary. In addition, several special forms of registration are offered for securities belonging to the estates of deceased owners and legally incompetent persons.

The primary owner with secondary owner form of registration replaces the coowner form used for definitive EE savings bonds. In the coowner form of registration, both coowners have an equal right to the bond. In the primary owner with secondary owner form, the purchaser of the bond, the primary

owner, has control of the bond. The primary owner may give the secondary owner the right to view or the right to conduct transactions in the bond, and may at any time revoke any rights given. The primary owner may remove the secondary owner without the consent of the secondary owner.

The single owner and owner with beneficiary forms of registration are identical to the registrations offered currently in definitive Series EE savings bonds.

The book-entry Series EE savings bond may be transferred from one New Treasury Direct account to another in order to give a gift (or in response to a final judgment, court order, divorce decree, or a property settlement agreement). The owner of the bond must certify online that the transfer is for the purpose of a gift or for one of the specified exceptions.

A book-entry Series EE savings bond may also be purchased as an irrevocable gift. The purchaser may deliver a gift bond to the account of the intended recipient immediately upon issue, or the purchaser may hold the bond until the purchaser chooses to deliver the bond to the intended recipient.

When transferred or delivered to the recipient, the gift bond will be transferred or delivered in the single owner form of registration to the owner named on the gift bond.

The limitation on purchases for book-entry Series EE savings bonds is $30,000 per person per calendar year for bonds purchased by the account owner. Bonds purchased as gifts are included in the amount limitation of the recipient when delivered. Book-entry Series EE savings bonds may be purchased in a minimum amount of $25, with one-cent increments above that amount per transaction. Book-entry bonds may be redeemed or transferred as a gift (or transferred pursuant to other permitted transfers) in an amount of $25 or greater redemption value.

The provisions relating to judicial proceedings are consistent with those governing definitive Series EE savings bonds. However, the primary owner with secondary owner form of registration for book-entry Series EE savings bonds mandates that some issues be treated differently. In the primary owner with secondary owner form of registration, the secondary owner has no right to redeem unless the primary owner gives him or her that right, and the right is revocable at any time. Thus, for purposes of judicial proceedings, a secondary owner is treated the same as a beneficiary.

We revised the governing regulations for all series of savings bonds and savings notes to streamline the procedures for handling decedents' estates. The change will provide a survivors' order of precedence that will permit a specified person to redeem or reissue savings bonds owned by a decedent on behalf of all persons entitled under state law, if the estate has not been administered, and if the redemption value of the bonds does not exceed $100,000. This change will provide consistency in the processing of bonds belonging to decedents' estates among all series of bonds and between definitive bonds and book-entry bonds. The previous regulations for savings bonds (except Series I) and savings notes provided for a similar survivors' order of precedence, but had a much lower amount limitation. The previous regulations for Series I savings bonds contained a slightly different version of the survivors' order of precedence.

Procedural Requirements

This final rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This final rule relates to matters of public contract and procedures for United States securities. The notice and public procedures requirements and delayed effective date requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply.

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects

31 CFR Part 315

Banks and banking, Government securities, Federal reserve system.

31 CFR Part 351

Bonds, Federal Reserve system, Government securities.

31 CFR Part 353

Banks and banking, Government securities, Federal reserve system.

31 CFR Part 359

Bonds, Federal Reserve system, Government securities, Securities.

31 CFR Part 360

Bonds.

31 CFR Part 363

Bonds, Electronic funds transfer, Federal Reserve system, Government securities, Securities.

■ Accordingly, for the reasons set out in the preamble, 31 CFR chapter II, subchapter B, is amended as follows:

PART 315—REGULATIONS GOVERNING U.S. SAVINGS BONDS, SERIES A, B, C, D, E, F, G, H, J, AND K, AND U.S. SAVINGS NOTES

■ 1. The authority citation for part 315 continues to read as follows:

Authority: 31 U.S.C. 3105 and 5 U.S.C. 301.

■ 2. Revise § 315.71 to read as follows:

§ 315.71 Decedent's estate.

(a) *Estate is being administered.* (1) Appropriate proof of appointment will be required for the legal representative of the estate. Letters of appointment must be dated within one year of submission.

(2) The bonds will be registered in the following form: ''John Doe, SSN 123–45–6789, Legal Representative of the estate of James Doe, deceased, SSN 987–65–4321.''

(3) The legal representative of the estate may request payment of bonds and held payments belonging to a decedent's estate, to the estate or to the person(s) entitled, or may have the bonds reissued to the person(s) entitled.

(b) *Estate has been settled previously.* If the estate has been previously settled through judicial proceedings, the person(s) entitled may request payment of bonds or may have the bonds reissued to the person(s) entitled. A certified copy of the court-approved final accounting for the estate, the court's decree of distribution, or other appropriate evidence will be required.

(c) *Summary administration procedures.* If there is no formal administration and no representative of the estate is to be appointed, the person(s) entitled under state law summary or small estates procedures may request payment of bonds or may have the bonds reissued to the person(s) entitled. Appropriate evidence is required.

(d) *Survivors' order of precedence for payment or reissue.* Estates with bonds over $100,000 redemption value must be administered. If there has been no administration, no administration is pending or contemplated, no summary or small estate procedures have been used, and the redemption value of the bonds is $100,000 or less, then bonds may be paid or reissued to the persons

named in the following order of precedence:

(1) There is a surviving spouse and no surviving child or descendant of a deceased child: to the surviving spouse.

(2) There is a surviving spouse and a child or children of the decedent, or descendants of deceased children: one-half to the surviving spouse and one-half to the child or children of the decedent, and the descendants of deceased children, by representation, or by agreement of all persons entitled in this class;

(3) There is no surviving spouse and there is a surviving child or descendant of deceased children: To the child or children of the decedent, and the descendants of deceased children, by representation.

(4) There are no surviving spouse, no surviving child, and no surviving descendants of deceased children: To the parents of the decedent, one-half to each, or in full to the survivor.

(5) There are no surviving spouse, no surviving child or surviving descendants of deceased children, and no surviving parents: To the brothers and sisters and descendants of deceased brothers and sisters by representation.

(6) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, and no brothers or sisters or descendants of deceased brothers and sisters: To other next of kin, as determined by the laws of the decedent's domicile at the time of death.

(7) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, no brothers or sisters or descendants of deceased brothers and sisters, and no next of kin, as determined by the laws of the decedent's domicile at the time of death: To persons related to the decedent by marriage, *i.e.*, heirs of a spouse of the last decedent where the spouse predeceased that registrant.

(8) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, no brothers or sisters or descendants of deceased brothers and sisters, no next of kin, as determined by the laws of the decedent's domicile at the time of death, and no persons related to the decedent by marriage: To the person who paid the burial and funeral expenses, or a creditor of the decedent's estate, but payment may be made only to the extent that the person has not been reimbursed. Reissues are not permitted.

(9) Escheat according to the applicable state law.

(e) When we make payments or reissues according to paragraph (d) of this section, we will make the payments to either a person individually, or individually and on behalf of all other persons entitled. A person who receives payment of bond proceeds individually and on behalf of others warrants that he or she will make distribution of the proceeds to the persons entitled by the law of the decedent's domicile. The provisions of this section are for the convenience of the United States and do not determine ownership of the bonds or their proceeds. The Department of the Treasury may rely on information provided by the person who requests payment or transfer, and is not liable for any action taken in reliance on the information furnished.

§ 315.72 [Reserved]

■ 3. Remove and reserve § 315.72.

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

■ 4. Revise part 351 to read as follows:

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

Sec.

Subpart A—General Information

351.0 What does this part cover?
351.1 What regulations govern Series EE savings bonds?
351.2 How do I contact Public Debt?
351.3 What special terms do I need to know to understand this part?
351.4 In what form are Series EE savings bonds issued?

Subpart B—Maturities, Redemption Values, and Investment Yields of Series EE Savings Bonds

General Provisions

351.5 What is the maturity period of a Series EE savings bond?
351.6 When may I redeem my Series EE savings bond?
351.7 May Series EE savings bonds be called for redemption prior to final maturity?
351.8 When is interest payable on Series EE savings bonds?
351.9 When will I receive the redemption value of my Series EE savings bonds?
351.10 What do I need to know about market yields, or market bid yields, to understand redemption value calculations in this subpart?
351.11 What do I need to know about the short-term savings bond rate, to understand redemption value calculations in this subpart?
351.12 What do I need to know about the long-term savings bond rate, to understand redemption value calculations in this subpart?
351.13 What do I need to know about the savings bond rate to understand redemption value calculations in this subpart?
351.14 When are rate announcements applicable to Series EE savings bonds announced?
351.15 Is the determination of the Secretary on rates and values final?
351.16 What do I need to know about the base denomination for redemption value calculations?
351.17–351.18 [Reserved]

Series EE Savings Bonds With Issue Dates Prior to May 1, 1995

351.19 What are maturity periods of Series EE savings bonds with issue dates prior to May 1, 1995?
351.20 What is the investment yield (interest) during the original maturity period of Series EE savings bonds with issue dates January 1, 1980, through April 1, 1995?
351.21 How are redemption values determined during any extended maturity period of Series EE savings bonds with issue dates prior to May 1, 1995?
351.22 When does the redemption value increase for bonds issued prior to May 1, 1995?
351.23 Are tables of redemption values available for bonds issued prior to May 1, 1995?

Series EE Savings Bonds With Issue Dates From May 1, 1995, Through April 1, 1997

351.24 What are the maturity periods of bonds with issue dates from May 1, 1995, through April 1, 1997?
351.25 What were the interest rates and redemption values for bonds with issue dates from May 1, 1995, through April 1, 1997, during semiannual rate periods in the first 5 years after issue date?
351.26 What are the interest rates and redemption values for bonds with issue dates from May 1, 1995 through April 1, 1997, during semiannual rate periods that begin 5 years or more after issue date?
351.27 What are the interest rates and redemption values for bonds with issue dates from May 1, 1995 through April 1, 1997, during an extended maturity period?
351.28 How are redemption values calculated for bonds with issue dates from May 1, 1995, through April 1, 1997?

Series EE Savings Bonds With Issue Dates From May 1, 1997, and Thereafter

351.29 What are the maturity periods of bonds with issue dates from May 1, 1997, and thereafter?
351.30 What are interest rates and monthly accruals for bonds with issue dates of May 1, 1997, or thereafter, during the original maturity period?
351.31 What is the interest penalty for Series EE bonds with issue dates of May 1, 1997, or thereafter that are redeemed less than 5 years after the issue date?
351.32 How are redemption values calculated for Series EE bonds with issue dates of May 1, 1997, or thereafter?
351.33 What are interest rates and redemption values for bonds issued May

1, 1997, or thereafter, during an extended maturity period?
351.34–351.39 [Reserved]

Subpart C—Definitive Series EE Savings Bonds

351.40 What are the denominations and prices of definitive Series EE savings bonds?
351.41 When are definitive Series EE savings bonds validly issued?
351.42 What is the issue date of a definitive Series EE savings bond?
351.43 Are taxpayer identification numbers (TINs) required for the registration of definitive Series EE savings bonds?
351.44 What amount of definitive Series EE savings bonds may I purchase per year?
351.45 What happens if I purchase definitive Series EE savings bonds in excess of the maximum annual amount?
351.46 May I purchase definitive Series EE savings bonds over-the-counter?
351.47 May I purchase definitive Series EE savings bonds through a payroll savings plan?
351.48 May I purchase definitive Series EE savings bonds through employee thrift, savings, vacation, and similar plans?
351.49 How are definitive Series EE savings bonds delivered?
351.50 How is payment made when definitive Series EE savings bonds are redeemed?
351.51 How can I find out what my definitive Series EE savings bonds are worth?
351.52–351.59 [Reserved]

Subpart D Book—Entry Series EE Savings Bonds

351.60 How are book-entry Series EE savings bonds purchased and held?
351.61 What are the denominations and prices of book-entry Series EE savings bonds?
351.62 How is payment made for purchases of book-entry Series EE savings bonds?
351.63 How are redemption payments made for my redeemed book-entry Series EE savings bonds?
351.64 What is the issue date of a book-entry Series EE savings bond?
351.65 What amount of book-entry Series EE savings bonds may I acquire per year?
351.66 What book-entry Series EE savings bonds are included in the computation?
351.67 What happens if any person purchases book-entry Series EE savings bonds in excess of the maximum annual amount?
351.68 Are taxpayer identification numbers (TINs) required for registration of book-entry Series EE savings bonds?
351.69 When is a book-entry Series EE savings bond validly issued?
351.70 How are redemption values calculated for book-entry Series EE savings bonds?
351.71 How can I find out what my book-entry Series EE savings bonds are worth?
351.72–351.80 [Reserved]

Subpart E—Miscellaneous Provisions

351.81 Is the Education Savings Bond Program available for Series EE savings bonds?
351.82 Does Public Debt prohibit the issuance of Series EE savings bonds in a chain letter scheme?
351.83 May Public Debt issue Series EE savings bonds only in book-entry form?
351.84 Does Public Debt make any reservations as to issue of Series EE savings bonds?
351.85 May Public Debt waive any provision in this part?
351.86 What is the role of Federal Reserve Banks and Branches?
351.87 May Public Debt revise, supplement or amend the terms of this offering?
Appendix to Part 351—Tax Considerations

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

Subpart A—General Information

§ 351.0 What does this part cover?

This part is the offering of United States Savings Bonds of Series EE (referred to as Series EE bonds or bonds) for sale to the people of the United States by the Secretary of the Treasury (Secretary). Series EE bonds have been offered since 1980. The current offer was effective May 1, 2003, and will continue until terminated by the Secretary.

§ 351.1 What regulations govern Series EE savings bonds?

(a) The regulations in 31 CFR part 353 apply to definitive (paper) Series EE savings bonds.

(b) The regulations in 31 CFR part 363 apply to book-entry Series EE savings bonds.

(c) The regulations in 31 CFR part 370 apply to transactions for the purchase of savings bonds issued through the Bureau of the Public Debt, but do not apply to transactions purchased through issuing agents generally.

(d) We expressly disclaim any representations or warranties regarding Series EE savings bonds that in any way conflict with these regulations and other applicable law.

§ 351.2 How do I contact Public Debt?

You may contact Public Debt by e-mail at <*savbonds@bpd.treas.gov*>, or by writing to the following address: Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328. Our website address is <*www.savingsbonds.gov*>.

§ 351.3 What special terms do I need to know to understand this part?

Accrual date is the first day of any month on which earnings on a Series EE bond accrue. The redemption value of a bond does not change between these accrual dates.

Automated Clearing House (ACH) means a funds transfer system governed by the Rules of the National Automated Clearing House Association (NACHA). NACHA provides for the interbank clearing of electronic entries for participating financial institutions.

Bank account means your account at a United States depository financial institution (whether a bank or other financial institution) to which you have directed that ACH debits and payments be made.

Beneficiary refers to the second individual named in the registration of a security held in definitive form registered ''John Doe SSN 123–45–6789 POD (payable on death to) Joseph Doe.'' In the New Treasury Direct system, beneficiary refers to the second individual named in the registration of a security registered ''John Doe SSN 123–45–6789 POD (payable on death to) Joseph Doe SSN 987–65–4321.'' In these examples, Joseph Doe is the beneficiary.

Book-entry bond means a Series EE savings bond maintained by Treasury solely as a computer record.

Coowner means either the first or the second individual named in the registration of a definitive Series EE savings bond registered ''John Doe SSN 123–45–6789 or Joseph Doe.'' In this example, John Doe and Joseph Doe are coowners.

Definitive bond means a Series EE savings bond issued in paper form.

Extended maturity period, second extended maturity period, and *extended maturity* refer to periods after the original maturity dates of the bonds during which owners may retain them and continue to earn interest.

Face amount refers to the nominal amount of a Series EE savings bond. The face amount of a definitive Series EE bond is imprinted on the front of the bond. The face amount of a book-entry Series EE bond is the amount of the original investment. (*See* principal amount.)

Fiduciary means the court-appointed or otherwise qualified person, regardless of title, who is legally authorized to act for another. Fiduciary does not include an attorney-in-fact.

Final maturity refers to the date that a bond ceases to earn interest.

Individual means a natural person. Individual does not mean an organization, representative, or fiduciary.

Interest, as used in this part, is the difference between the principal amount and the redemption value of the bond.

Issue date is the first day of the month in which an authorized issuing agent receives payment of the issue price of the bond.

Issuing agent means an organization that has been qualified under 31 CFR

part 317, and any other entity that is otherwise authorized to issue bonds.

New Treasury Direct system (New Treasury Direct) is an online account system in which you may hold and conduct transactions in eligible book-entry Treasury securities.

Original maturity period or *original maturity* refers to the initial maturity period of a bond prior to any extensions of maturity; this period varies from 8 to 20 years, depending on the issue date of the bond.

Owner is either a single owner, the first individual named in the registration of a bond held in the owner with beneficiary form of registration, or the primary owner of a book-entry bond held in the primary owner with secondary owner form of registration.

Par means the face amount of a Series EE savings bond.

Paying agent means a financial institution that has been qualified under 31 CFR part 321.

Person means an entity including an individual, trust, estate, corporation, government entity, association, partnership, and any other similar organization. Person does not mean a Federal Reserve Bank.

Primary owner means the first individual named in the registration of a book-entry bond held in New Treasury Direct registered ''John Doe SSN 123–45–6789 with Joseph Doe SSN 987–65–4321.'' In this example, John Doe is the primary owner.

Principal amount means the amount of the original investment. Principal amount does not include any interest earned.

Redemption of a book-entry Series EE savings bond refers to payment of principal and accrued interest on the bond at final maturity, or, at the option of the owner, prior to final maturity. The owner of a book-entry savings bond held in New Treasury Direct may redeem all principal and interest or a portion of the principal and the proportionate amount of interest.

Redemption of a definitive Series EE savings bond refers to the payment of principal and accrued interest when the owner presents the bond for payment.

Redemption value means principal plus accrued interest of a Series EE savings bond, as of the date of potential or actual redemption. In the case of a book-entry Series EE savings bond, it also refers to a portion of the principal amount plus a proportionate amount of accrued interest of a bond, as of the date of potential or actual redemption.

Registration of a book-entry Series EE savings bond means that the name and taxpayer identification number (TIN) of all registrants are maintained on our records for a book-entry bond.

Registration of a definitive Series EE savings bond means that the name and TIN of the owner, first-named coowner, or purchaser of a gift bond are imprinted on the face of the bond.

Secondary owner means the second individual named in the registration of a book-entry bond held in New Treasury Direct registered ''John Doe SSN 123–45–6789 with Joseph Doe SSN 987–65–4321.'' In this example, Joseph Doe is the secondary owner.

Semiannual rate periods or *semiannual earnings periods* are the six-month periods beginning on the issue date and on each semiannual anniversary of the issue date to final maturity.

Series EE savings bond is an accrual-type savings bond, offered at a discount, either in definitive (paper) form or in book-entry form, that pays interest on the principal based on rates determined by Treasury.

Single owner means the person named in the registration of a savings bond without a coowner, beneficiary or secondary owner.

Taxpayer identification number (TIN) means the identifying number required on tax returns and other documents submitted to the Internal Revenue Service; for example, an individual's social security account number (SSN) or an employer identification number (EIN). A SSN is composed of nine digits separated by two hyphens, for example, 123–45–6789. An EIN is composed of nine digits separated by one hyphen, for example, 12–3456789. The hyphens are an essential part of the numbers.

We, us, or *our* refers to the agency, the Bureau of the Public Debt. The term extends to the Secretary of the Treasury and the Secretary's delegates at the Treasury Department and Bureau of the Public Debt. The term also extends to any fiscal or financial agent we designate to act on behalf of the United States.

You or *your* refers to an owner of a Series EE savings bond.

§ 351.4 In what form are Series EE savings bonds issued?

Series EE savings bonds are issued in either book-entry or definitive form.

Subpart B—Maturities, Redemption Values, and Investment Yields of Series EE Savings Bonds

General Provisions

§ 351.5 What is the maturity period of a Series EE savings bond?

Series EE savings bonds have a total maturity period of 30 years from the issue date, consisting of an original maturity period and one or two periods of extended maturity, which vary depending on the issue date of the bond. The interest on an outstanding bond ceases to accrue 30 years after its issue date.

§ 351.6 When may I redeem my Series EE savings bond?

(a) *Bonds with issue dates on or before January 1, 2003.* You may redeem your Series EE savings bond at any time beginning six months after its issue date.

(b) *Bonds with issue dates on or after February 1, 2003.* You may redeem your Series EE savings bond at any time beginning twelve months after its issue date.

§ 351.7 May Series EE savings bonds be called for redemption prior to final maturity?

The Secretary of the Treasury may not call Series EE bonds for redemption prior to final maturity.

§ 351.8 When is interest payable on Series EE savings bonds?

Interest on a bond accrues and becomes part of the redemption value. Interest earnings are payable upon redemption.

§ 351.9 When will I receive the redemption value of my Series EE savings bonds?

(a) You will be paid the redemption value of your definitive bond when you surrender the bond for payment as provided in these regulations and in 31 CFR part 353.

(b) You will be paid the redemption value of your book-entry bond when it reaches final maturity, if you have not redeemed the bond previously.

§ 351.10 What do I need to know about market yields, or market bid yields, to understand redemption value calculations in this subpart?

We use market yields, or market bid yields, derived from Treasury bills, notes, and bonds, to create a yield curve based on the most actively traded Treasury securities. This curve relates the yield on a security to its time to maturity. Yields at particular points on the curve are referred to as ''constant maturity yields'' and are determined by the Treasury from this daily yield curve. Six-month and 5-year Treasury securities rates are derived from these yield curves.

§ 351.11 What do I need to know about the short-term savings bond rate, to understand redemption value calculations in this subpart?

We determine this rate by compiling 6-month Treasury securities rates as of

the close of business for each day of the previous three months and calculating the monthly average for each month, rounding each monthly average to the nearest one-hundredth of one percent. We then determine the short-term savings bond rate by taking 85 percent of the three-month average and rounding the result to the nearest one-hundredth of one percent. For bonds entitled to interest accruals at the short-term savings bond rate, that rate applies to the bond's first full semiannual interest accrual period following each announcement of the rate.

§ 351.12 What do I need to know about the long-term savings bond rate, to understand redemption value calculations in this subpart?

We determine this rate by compiling 5-year Treasury securities rates as of the close of business for each day of the previous six months and calculating the monthly average for each month, rounding each monthly average to the nearest one-hundredth of one percent. We then determine the long-term savings bond rate by taking 85 percent of the 6-month average and rounding the result to the nearest one-hundredth of one percent. For bonds entitled to interest accruals at the long-term savings bond rate, that rate applies to the bond's first full semiannual interest accrual period following each announcement of the rate.

§ 351.13 What do I need to know about the savings bond rate to understand redemption value calculations in this subpart?

We determine the savings bond rate by compiling 5-year Treasury securities yields as of the close of business for each day of the previous six months and calculating the monthly average to the nearest one-hundredth of one percent. We then determine the savings bonds rate by taking 90 percent of the 6-month average and rounding the result to the nearest one-hundredth of one percent.

§ 351.14 When are rate announcements that apply to Series EE savings bonds announced?

(a) The Secretary will furnish rates that apply to Series EE savings bonds in announcements published each May 1 and November 1.

(b) If the regularly scheduled date for the announcement is a day when we are not open for business, then the Secretary will make the announcement on the next business day. However, the effective date of the rate remains the first day of the month of the announcement.

(c) The Secretary may announce rates at any other time.

§ 351.15 Is the determination of the Secretary on rates and values final?

The Secretary's determination of rates of return and savings bond redemption values is final and conclusive.

§ 351.16 What do I need to know about the base denomination for redemption value calculations?

We base all calculations of interest on a unit with a principal amount of $12.50. We use this unit value to determine the value of bonds in higher denominations. The effect of rounding off the value of the $12.50 unit increases at higher denominations. This can work to your slight advantage or disadvantage, depending on whether the value is rounded up or down.

Example. The following hypothetical example illustrates the calculation: A rate of 3.25% will result in a newly purchased $12.50 unit increasing in value after six months to $12.70, when rounded to the nearest cent. Therefore, a $5,000 definitive Series EE bond (with a principal amount of $2,500) will be worth $2,540 after six months ([$2,500 divided by $12.50] × $12.70 = $2,540.) In contrast, if applied directly to a $2,500 principal amount, the rate would render a value of $2,540.63 after six months, a difference of 63 cents. (This example does not account for any interest penalty that might apply if you redeem a bond less than five years after its issue date.)

§§ 351.17–351.18 [Reserved]

Series EE Savings Bonds with Issue Dates Prior to May 1, 1995

§ 351.19 What are maturity periods of Series EE savings bonds with issue dates prior to May 1, 1995?

Bonds with issue dates from January 1, 1980, through May 1, 1995 have an original maturity period and two extended maturity periods, as shown by the following table:

Issue dates—1st day of	Original term (in years)	First extended term (in years)	Second extended term (in years)	Final maturity dates
Jan. 1980–Oct. 1980	11	10	9	Jan. 2010–Oct. 2010.
Nov. 1980–Apr. 1981	9	10	11	Nov. 2010–Apr. 2011.
May 1981–Oct. 1982	8	10	12	May 2011–Oct. 2012.
Nov. 1982–Oct. 1986	10	10	10	Nov. 2012–Oct. 2016.
Nov. 1986–Feb. 1993	12	10	8	Nov. 2016–Feb. 2023.
Mar. 1993–Apr. 1995	18	10	2	Mar. 2023–Apr. 2025.

§ 351.20 What is the investment yield (interest) during the original maturity period of Series EE savings bonds with issue dates from January 1, 1980, through April 1, 1995?

The redemption value of a bond on a given interest accrual date during original maturity will be the higher of the value produced using the applicable guaranteed minimum investment yield or the value produced using the appropriate market-based variable investment yield.

(a) *Guaranteed minimum investment yield.* (1) *Bonds bearing issue dates prior to November 1, 1982.* You may obtain the guaranteed minimum investment yields on bonds bearing issue dates prior to November 1, 1982, by downloading from our website at <*www.savingsbonds.gov*>, contacting us by email at <*savbonds@bpd.treas.gov*>, or by writing us at the following address: Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328.

(2) *Bonds bearing issue dates of November 1, 1982, through April 1, 1995.* (i) *Prior to 5 years from issue date.* You may download the guaranteed minimum investment yields prior to 5 years from issue date at our website at <*www.savingsbonds.gov*>, by contacting us by email at <*savbonds@bpd.treas.gov*>, or writing to the following address: Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328.

(ii) *On or after 5 years from issue date.* The guaranteed minimum investment yield of a bond from its issue date to each semiannual interest accrual date occurring on or after 5 years from issue up to original maturity will be as follows, compounded semiannually:

Issue dates of bonds	Percent
Nov. 1, 1982–October 1, 1986 ...	7.5
Nov. 1, 1986–Feb. 1, 1993	6
Mar. 1, 1993–Apr. 1, 1995	4

(b) *Market-based variable investment yield.* If a bond is held for a period of 5 years after its first semiannual interest accrual period, occurring on or after November 1, 1982, or its issue date, whichever is later, its market-based variable investment yield for such period, and to each successive semiannual interest accrual date up to its original maturity, will be determined as follows:

(1) For each 6-month period, starting with the period beginning on May 1, 1982, we will determine the average market yield on outstanding marketable Treasury securities with a remaining term to maturity of approximately 5 years during such period.

(2) For bonds bearing an issue date prior to May 1, 1989, the market-based variable investment yield from its first semiannual interest accrual date occurring on or after November 1, 1982, or its issue date, whichever is later, to its first semiannual interest accrual date 5 years thereafter will be 85 percent, rounded to the nearest one-fourth of 1 percent, of the arithmetic average of the market yield averages for the ten 6-month periods starting with the 6-month period that most recently ended before such issue date, whichever is later.

(3) For bonds bearing issue dates of May 1, 1989, through April 1, 1995, the market-based variable investment yield from the issue date to the semiannual interest accrual date 5 years thereafter will be 85 percent, rounded to the nearest one-hundredth of 1 percent, of the arithmetic average of the market yield averages for the ten 6-month periods starting with the 6-month period that most recently ended before such issue date.

(4) In determining the market-based variable investment yield for a bond from its first semiannual interest accrual date occurring on or after November 1, 1982, or its issue date, whichever is later, to each successive semiannual interest accrual date occurring after 5 years from issue up to original maturity, the average market yield for each additional 6-month period will be included in the computation.

§ 351.21 How are redemption values determined during any extended maturity period of Series EE savings bonds with issue dates prior to May 1, 1995?

The redemption value of a bond on a given interest accrual date during an extended maturity period or periods will be the higher of the values produced using either the applicable guaranteed minimum investment yield or the appropriate market-based variable investment yield. The calculation of these yields and the resulting redemption values are described below:

(a) *Guaranteed minimum investment yield and resulting values during an extended maturity period.* A bond may be subject to one guaranteed minimum investment yield during its original maturity period and to another such yield during each of its extended maturity periods.

(1) *Bonds entering an extended maturity period from May 1, 1989, through February 1, 1993.* Bonds that entered an extended maturity period from May 1, 1989, through February 1, 1993, had a guaranteed minimum investment yield of 6 percent per annum, compounded semiannually, during that extended maturity period.

(2) *Bonds entering an extended maturity period on or after March 1, 1993.* Bonds that entered or enter an extended maturity period on or after March 1, 1993, have a guaranteed minimum investment yield of 4 percent per annum, compounded semiannually, during that extended maturity period, or the guaranteed minimum investment yield in effect at the beginning of that period.

(3) *Determination of values for a bond during extended maturity periods.* In order to determine values for a bond during its first extended maturity period, we determine the value of the bond at the end of its original maturity period using the guaranteed minimum investment yield applicable to that period. This value is then used as the base upon which interest accrues during the first extended maturity period at the applicable guaranteed minimum investment yield for that period. We use the value thus attained at first extended maturity as the base upon which interest accrues during the second extended maturity period at the applicable guaranteed minimum investment yield for that period. We then compare the resulting semiannual values with the corresponding values determined using only the applicable market-based variable investment yields.

(b) *Market-based variable investment yield and resulting values during an extended maturity period.* For a bond beginning an extended maturity period, the market-based variable investment yield from its first semiannual interest accrual date occurring on or after November 1, 1982, or its issue date, whichever is later, to each semiannual interest accrual date occurring on or after November 1, 1989, will be 85 percent, rounded to the nearest one-hundredth of one percent, of the arithmetic average of the market yield averages for the appropriate number of 6-month periods involved, beginning with the period from May 1, 1982, or the 6-month period that most recently ended before the issue date, whichever period occurs later. We use the value of a bond on its first semiannual interest accrual date occurring on or after November 1, 1982, or its issue date, whichever is later, as the base upon which interest accrues during the extended maturity period at the applicable market-based variable investment yield. As described above, the bond will receive the higher of the two values: One value produced using the applicable market-based variable investment yield; and, the other value produced using the guaranteed minimum investment yield.

§ 351.22 When does the redemption value increase for bonds issued prior to May 1, 1995?

(a) *Bonds with issue dates from January 1, 1980, through October 1, 1980.* For bonds with issue dates from January 1, 1980, through October 1, 1980, the redemption value increases on the first day of each month from the third through the thirtieth month after issue, and thereafter on the first day of each successive 6-month period.

(b) *Bonds with issue dates from November 1, 1980, through October 1, 1986.* For bonds with issue dates from November 1, 1980, through October 1, 1986, the redemption value increases on the first day of each month from the third through the eighteenth month after issue, and thereafter on the first day of each successive 6-month period.

(c) *Bonds with issue dates from November 1, 1986, through February 1, 1993.* For bonds with issue dates from November 1, 1986, through February 1, 1993, the redemption values increase on the first day of each month from the third through the thirtieth month after issue, and thereafter on the first day of each successive 6-month period.

(d) *Bonds with issue dates of March 1, 1993, through April 1, 1995.* For bonds with issue dates of March 1, 1993, through April 1, 1995, the redemption values increase on the first day of each month from the third through the sixtieth month after issue, and thereafter either on the first day of each month or on the first day of each successive 6-month period, whichever accrual schedule ensures that the actual yield from issue date to redemption date

is in no case less than 4 percent per annum, compounded semiannually.

§ 351.23 Are tables of redemption values available for bonds issued prior to May 1, 1995?

You may obtain the appropriate yields and tables by downloading from our website at <*www.savingsbonds.gov*>, contacting us by email at <*savbonds@bpd.treas.gov*>, or by writing us at the following address: Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328.

Series EE Savings Bonds With Issue Dates From May 1, 1995, Through April 1, 1997

§ 351.24 What are the maturity periods of bonds with issue dates from May 1, 1995, through April 1, 1997?

(a) *Original maturity.* Bonds reach original maturity at 17 years after issue date.

(b) *Final maturity.* Series EE savings bonds have an extended maturity period of 13 years, and reach final maturity at 30 years after the issue date. Bonds cease to earn interest at final maturity.

§ 351.25 What were the interest rates and redemption values for bonds with issue dates from May 1, 1995, through April 1, 1997, during semiannual rate periods in the first 5 years after issue date?

(a) *Interest rates.* The interest rate for a Series EE bond bearing an issue date of May 1, 1995, through April 1, 1997, for semiannual earning periods during the first 5 years from issue date, was the short-term savings bond rate (see § 351.11 for a description of the short-term savings bond rate.)

(b) *Redemption values.* Redemption values for semiannual accrual dates occurring on or before 5 years from issue date are calculated in accordance with § 351.28.

§ 351.26 What are the interest rates and redemption values for bonds with issue dates from May 1, 1995 through April 1, 1997, during semiannual rate periods that begin 5 years or more after issue date?

(a) *Interest rates.* The interest rate for a Series EE bond bearing an issue date of May 1, 1995, through April 1, 1997, for semiannual earning periods beginning 5 years from issue date through original maturity, is the long-term savings bond rate as defined in § 351.12.

(b) *Redemption values.* We calculate redemption values for semiannual accrual dates occurring after 5 years from issue date, through original maturity, in accordance with § 351.28, except that the redemption value at the date of original maturity shall not be less than the denomination (face amount or face value).

§ 351.27 What are the interest rates and redemption values for bonds with issue dates from May 1, 1995, through April 1, 1997, during an extended maturity period?

During an extended maturity period the bond will be subject to the terms and conditions in effect when it is issued, and will continue to earn interest as described in paragraph § 351.26, unless the terms and conditions applicable to an extended maturity period are expressly amended prior to the beginning of such period.

§ 351.28 How are redemption values calculated for bonds with issue dates from May 1, 1995, through April 1, 1997?

We determine the redemption value of a bond on the accrual date immediately following each semiannual earning period as follows:

(a) We convert the applicable long-term or short-term savings bond rate for the semiannual earning period to decimal form by dividing by 100, and adjust it to a semiannual rate by dividing by 2.

(b) Using redemption values for the base denomination, as defined in § 351.16, we then multiply this rate by the redemption value of the bond at the beginning of the semiannual earning period.

(c) We add the resulting interest amount, rounded to the nearest cent, to the redemption value of the bond at the beginning of the earning period to produce the redemption value at the next semiannual accrual date. The redemption value of a bond remains constant between accrual dates.

Series EE Savings Bonds With Issue Dates From May 1, 1997, and Thereafter

§ 351.29 What are the maturity periods of bonds with issue dates from May 1, 1997, and thereafter?

(a) *Original maturity.* (1) *Bonds with issue dates from May 1, 1997, to May 1, 2003.* Bonds reach original maturity at 17 years after issue date.

(2) *Bonds with issue dates from June 1, 2003, and thereafter.* Bonds reach original maturity at 20 years after issue date.

(b) *Final maturity.* Bonds reach final maturity at 30 years after the issue date. Bonds cease to earn interest at final maturity.

§ 351.30 What are interest rates and monthly accruals for bonds with issue dates of May 1, 1997, or thereafter, during the original maturity period?

Savings bond rates (defined in § 351.13) apply to earnings during the first semiannual rate period beginning on or after the effective date of the rate. Interest is credited on the first day of each month and compounded semiannually. Interest accrues beginning with the fourth month from the issue date. For example, a bond issued in January has interest first credited on May 1, which represents one month of interest because of the 3-month interest penalty. The following table shows, for any given month of issue with rates announced each May and November, the months making up the semiannual rate period during which interest is earned at the announced rate (disregarding the penalty for bonds redeemed prior to 5 years after the issue date) and the months in which the bonds increase in value. This rate is an annual rate compounded semiannually.

If issue month is—	And rate announcement/ effective date is—	Then, semiannual rate periods in which interest is earned include months of—	And bonds increase in value on 1st day of months of—
Jan. or Jul	May 1	Jul. through Dec	Aug. through Jan.
Feb. or Aug	May 1	Aug. through Jan	Sep. through Feb.
Mar. or Sep	May 1	Sep. through Feb	Oct. through Mar.
Apr. or Oct	May 1	Oct. through Mar	Nov. through Apr.
May or Nov	May 1	May through Oct	Jun. through Nov.
Jun. or Dec	May 1	Jun. through Nov	Jul. through Dec.
Jan. or Jul	Nov. 1	Jan. through Jun	Feb. through Jul.
Feb. or Aug	Nov. 1	Feb. through Jul	Mar. through Aug.
Mar. or Sep	Nov. 1	Mar. through Aug	Apr. through Sep.
Apr. or Oct	Nov. 1	Apr. through Sep	May through Oct.
May or Nov	Nov. 1	Nov. through Apr	Dec. through May.

If issue month is—	And rate announcement/ effective date is—	Then, semiannual rate periods in which interest is earned include months of—	And bonds increase in value on 1st day of months of—
Jun. or Dec	Nov. 1	Dec. through May	Jan. through Jun.

§ 351.31 What is the interest penalty for Series EE bonds with issue dates of May 1, 1997, or thereafter, that are redeemed less than 5 years after the issue date?

If you redeem a Series EE savings bond with an issue date of May 1, 1997, or thereafter, less than five years following the issue date, we reduce the overall earning period from the issue date by three months. For example, if you redeem a bond issued January 1, 1998, 9 months later on October 1, 1998, we will determine the redemption value by applying the redemption value calculation formula described in § 351.32 and the savings bonds rate for that bond at 6 months after the issue date on July 1, 1998. The redemption value of a bond subject to the 3-month interest penalty shall not be reduced below the issue price. This penalty does not apply to bonds redeemed 5 years or more after the issue date.

§ 351.32 How are redemption values calculated for Series EE bonds with issue dates of May 1, 1997, or thereafter?

(a) *Formula for redemption value.* We determine the redemption value of a bond for the accrual date (the first day of each month beginning with the fourth month from the issue date) in accordance with this section and the following formula:

$$FV = PV \times \{[1+(i \div 2)]^{(m/6)}\}$$

where

FV (future value) = redemption value on redemption date rounded to the nearest cent.

PV (present value) = redemption value at the beginning of the semiannual rate period

i = savings bonds rate converted to decimal form by dividing by 100.

m = number of full calendar months outstanding during the semiannual rate period.[1]

(b) *Value of bonds at original maturity.* (1) *Definitive bond.* At original maturity, the redemption value of a definitive bond shall not be less than the face amount/denomination of the bond.

(2) *Book-entry bond.* At original maturity, the redemption value of a book-entry bond shall not be less than double the purchase price of the bond.

§ 351.33 What are interest rates and redemption values for bonds issued May 1, 1997, or thereafter, during an extended maturity period?

During an extended maturity period the bond will be subject to the terms and conditions in effect when it is issued and will continue to earn interest as described in § 351.30, unless the terms and conditions applicable to an extended maturity period are expressly amended prior to the beginning of such period.

§ 351.34–351.39 [Reserved]

Subpart C—Definitive Series EE Savings Bonds

§ 351.40 What are the denominations and prices of definitive Series EE savings bonds?

We issue definitive bonds in denominations of $50, $75, $100, $200, $500, $1,000, $5,000, and $10,000. The purchase price is one-half the amount of the denomination.

§ 351.41 When are definitive Series EE savings bonds validly issued?

A definitive bond is validly issued when it is registered as provided in 31 CFR part 353, and when it bears an issue date and the validation indicia of an authorized issuing agent.

§ 351.42 What is the issue date of a definitive Series EE savings bond?

The issue date of a definitive bond is the first day of the month in which an authorized issuing agent receives payment of the issue price.

§ 351.43 Are taxpayer identification numbers (TINs) required for the registration of definitive Series EE savings bonds?

The inscription of a definitive bond must include the TIN of the owner or first-named coowner. The TIN of the second-named coowner or beneficiary is not required but its inclusion is desirable. If the bond is being purchased as a gift or award and the owner's TIN is not known, the TIN of the purchaser must be included in the inscription on the bond.

§ 351.44 What amount of definitive Series EE savings bonds may I purchase per year?

The principal amount of definitive bonds that you may purchase in any calendar year is limited to $30,000. See 31 CFR 353.10 and 353.11 of this Chapter for rules governing the computation of amounts and the special limitation for employee plans.

§ 351.45 What happens if I purchase definitive Series EE savings bonds in excess of the maximum annual amount?

If you have bonds issued during any one calendar year in excess of the prescribed maximum annual amount, we reserve the right to take any action we deem necessary to adjust the excess. You should obtain instructions for adjustment of the excess from us at the following address: email at <*savbonds@bpd.treas.gov*>, or writing to Bureau of the Public Debt, Parkersburg, WV 26106–1328, or.

§ 351.46 May I purchase definitive Series EE savings bonds over-the-counter?

You may purchase definitive bonds over-the-counter through any issuing agent qualified under 31 CFR part 317.[2] To purchase over-the-counter, you must submit a purchase application, along with payment in the amount of the issue price to an issuing agent. You may use any means of payment acceptable to the issuing agent. You may authorize purchases on a recurring basis in your application. The issuing agent bears the burden of collection and the risk of loss for non-collection or return of the payment.

[1] The following hypothetical example illustrates how this formula is applied:

Example, assume a hypothetical savings bonds rate of 5.00% effective May 1, 2002, for a bond denominated at $25, with an issue date of September 1, 1997 and a redemption value of $16.00 as of September 1, 2002. The February 1, 2003, redemption value is calculated as follows: Bonds issue dated in September have semiannual rate periods beginning each March 1 and September 1. The first semiannual rate period to begin on or after the effective date of the May 1, 2002, rate would be the period beginning September 1, 2002. PV, the present value, would be the value of the bond at the beginning of the semiannual rate period, on September 1, 2002. The savings bonds rate of 5.00% converted to a decimal would be 0.05. The number of months, m, is 5 since 5 full calendar months (September through January) have lapsed since the beginning of the rate period. FV is then the result of the formula:

$$FV = \$16.00 \times \{[1 + (0.05 \div 2)]^{(5/6)}\} = \$16.33$$ after rounding to the nearest cent.

Using the example, the FV of a savings bond with a $50 or larger denomination can be determined by applying the appropriate multiple, for example: $16.33 × ($50.00/$25.00) for a bond with a $50.00 face amount; or $16.33 × ($100.00/$25.00) for a bond with a $100.00 face amount.

[2] However, an organization serving as an issuing agent because of its status as an employer or an organization operating an employer's payroll savings plan under § 317.2(c) may sell bonds only through payroll savings plans.

§ 351.47 May I purchase definitive Series EE savings bonds through a payroll savings plan?

You may purchase definitive bonds in denominations of $100 or higher through deductions from your pay if your employer maintains a payroll savings plan. An authorized issuing agent must issue the bonds.

§ 351.48 May I purchase definitive Series EE savings bonds through employee thrift, savings, vacation, and similar plans?

You may purchase bonds registered in the names of trustees of employee plans in book-entry form in multiples of $100 through a designated Federal Reserve Bank, after we have approved the plan as eligible for the special limitation under § 353.13 of this chapter.

§ 351.49 How are definitive Series EE savings bonds delivered?

We deliver definitive bonds by mail to your address. If your address is within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, we will deliver bonds at our risk. Bonds delivered elsewhere will be delivered at your risk; however, at our discretion, we may require delivery to an address within the United States, or refuse delivery to addresses in countries referred to in part 211 of this chapter.

§ 351.50 How is payment made when definitive Series EE savings bonds are redeemed?

(a) *Payment in general.* A financial institution qualified as a paying agent under the provisions of 31 CFR part 321 will pay the current redemption value of a definitive Series EE bond presented for payment. The bond must meet the requirements for payment specified in 31 CFR part 353. You must establish your identity and entitlement to redemption to the satisfaction of the agent, in accordance with our instructions and identification guidelines, and must sign and complete the request for payment.

(b) *Payment to beneficiary or legal representative.* A paying agent may, but is not required to, pay the current redemption value of a definitive Series EE savings bond upon the request of a beneficiary if he or she survives the owner, or a legal representative designated in the bond registration by name and capacity, or a court-appointed legal representative of the last-deceased registrant's estate provided:

(1) The bond is in order for payment; and

(2) The presenter establishes his or her identity to the satisfaction of the agent in accordance with our instructions and identification guidelines, and signs and completes the request for payment.

§ 351.51 How can I find out what my definitive Series EE savings bonds are worth?

(a) *Redemption values.* We make redemption values available for definitive bonds in various formats and media.

(1) You may determine the redemption value for definitive bonds on the Internet at <*http://www.savingsbonds.gov*>.

(2) You may download savings bond calculators from the Internet at <*http://www.savingsbonds.gov*>.

(3) You may obtain paper tables from the Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328. We reserve the right to cease making paper tables of redemption values available.

(b) *Redemption penalty.* For bonds issued after May 1, 1997, redemption values published in the tables reflect the three-month interest penalty applied to bonds redeemed prior to five years from the issue date.

§ 351.52–351.59 [Reserved]

Subpart D—Book-Entry Series EE Savings Bonds

§ 351.60 How are book-entry Series EE savings bonds purchased and held?

Book-entry bonds must be purchased and held online through your New Treasury Direct account. We provide instructions for opening an account online at <*http://www.publicdebt.treas.gov*>.

§ 351.61 What are the denominations and prices of book-entry Series EE savings bonds?

Book-entry bonds are issued in a minimum amount of $25, with additional increments of one cent.

§ 351.62 How is payment made for purchases of book-entry Series EE savings bonds?

Purchases of book-entry EE bonds are made through your New Treasury Direct account. We will debit your designated account at a United States depository financial institution for payment of the bonds.

§ 351.63 How are redemption payments made for my redeemed book-entry Series EE savings bonds?

We will make payments electronically by direct deposit, using the ACH method, to your designated account at a United States depository financial institution.

§ 351.64 What is the issue date of a book-entry Series EE savings bond?

The issue date of a book-entry savings bond is the first day of the month in which we receive ACH settlement for the bond.

§ 351.65 What amount of book-entry Series EE savings bonds may I acquire per year?

The principal amount of book-entry bonds that you may acquire in any calendar year is limited to $30,000.

§ 351.66 What book-entry Series EE savings bonds are included in the computation?

(a) We include all bonds that you purchased in that calendar year.

(b) Bonds purchased as gifts or in a fiduciary capacity are not included in the computation for the purchaser.

(c) Bonds transferred or delivered from one New Treasury Direct account to another New Treasury Direct account are included in the computation for the recipient, unless the recipient has become entitled to the transferred bonds due to the death of the registered owner.

§ 351.67 What happens if any person purchases book-entry Series EE savings bonds in excess of the maximum annual amount?

We reserve the right to take any action we deem necessary to adjust the excess, including the right to remove the excess bonds from your New Treasury Direct account and refund the payment price to your bank account of record using the ACH method of payment.

§ 351.68 Are taxpayer identification numbers (TINs) required for registration of book-entry Series EE savings bonds?

The TIN of each person named in the registration is required to purchase a book-entry bond.

§ 351.69 When is a book-entry Series EE savings bond validly issued?

A book-entry bond is validly issued when it is posted to your New Treasury Direct account.

§ 351.70 How are redemption values calculated for book-entry Series EE savings bonds?

We base current redemption values (CRV) for book-entry Series EE savings bonds on the definitive savings bond CRV. We use the CRV for a $100 principal amount as calculated in § 351.16 to calculate a CRV prorated to the book-entry principal investment amount for the corresponding issue and redemption dates. Calculated book-entry

CRV will be rounded to the nearest one cent.[3] The formula is as follows:

[Book-entry principal investment ÷ $100] × [CRV value for $100 principal amount].

§ 351.71 How can I find out what my book-entry Series EE savings bonds are worth?

(a) *Redemption values.* You may access redemption values for your book-entry bonds through your New Treasury Direct account.

(b) *Redemption penalty.* Redemption values shown in your New Treasury Direct account for bonds that are within 5 years from issue date reflect the three-month interest penalty applied to bonds redeemed prior to five years from the issue date.

§ 351.72–351.80 [Reserved]

Subpart E—Miscellaneous Provisions

§ 351.81 Is the Education Savings Bond Program available for Series EE savings bonds?

You may be able to exclude from income for Federal income tax purposes all or part of the interest received on the redemption of qualified bonds during the year. To qualify for the program, you or the coowner (in the case of definitive savings bonds) must have paid qualified higher education expenses during the same year. You also must have satisfied certain other conditions. This exclusion is known as the Education Savings Bond Program. Information about the program can be found in Internal Revenue Service Publications. (For example, *see* Publication 17, ''Your Federal Income Tax,'' Publication 550, ''Investment Income and Expenses,'' and Publication 970, ''Tax Benefits for Higher Education.'') These publications are available on the IRS Web site at *<http://www.irs.gov>.*

§ 351.82 Does Public Debt prohibit the issuance of Series EE savings bonds in a chain letter scheme?

We do not permit bonds to be issued in a chain letter or pyramid scheme. We authorize an issuing agent to refuse to issue a bond or accept a purchase order if there is reason to believe that a purchase is connected with a chain letter. The agent's decision is final.

§ 351.83 May Public Debt issue Series EE savings bonds only in book-entry form?

We reserve the right to issue bonds only in book-entry form.

§ 351.84 Does Public Debt make any reservations as to issue of Series EE savings bonds?

We may reject any application for Series EE bonds, in whole or in part. We may refuse to issue, or permit to be issued, any bonds in any case or class of cases, if we deem the action to be in the public interest. Our action in any such respect is final.

§ 351.85 May Public Debt waive any provision in this part?

We may waive or modify any provision of this part in any particular case or class of cases for the convenience of the United States or in order to relieve any person or persons of unnecessary hardship:

(a) If such action would not be inconsistent with law or equity;

(b) If it does not impair any material existing rights; and

(c) If we are satisfied that such action would not subject the United States to any substantial expense or liability.

§ 351.86 What is the role of Federal Reserve Banks and Branches?

(a) Federal Reserve Banks and Branches are fiscal agents of the United States. They are authorized to perform such services as we may request of them, in connection with the issue, servicing and redemption of Series EE bonds.

(b) We have currently designated the following Federal Reserve Offices to provide savings bond services:

Servicing site	Reserve district served	Geographic area served
Federal Reserve Bank, Buffalo Branch, 160 Delaware Avenue, Buffalo, NY 14202.	New York, Boston	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey (northern half), New York, Rhode Island, Vermont, Puerto Rico, Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, 717 Grant Street, Pittsburgh, PA 15219.	Cleveland, Philadelphia	Delaware, Kentucky (eastern half), New Jersey, (southern half), Ohio, Pennsylvania, West Virginia (northern panhandle only).
Federal Reserve Bank of Richmond, 701 East Byrd Street, Richmond, VA 23219.	Richmond, Atlanta	Alabama, District of Columbia, Florida, Georgia, Louisiana (southern half), Maryland, Mississippi (southern half), North Carolina, South Carolina, Tennessee (eastern half), Virginia, West Virginia (except northern panhandle).
Federal Reserve Bank of Minneapolis, 90 Hennepin Avenue, Minneapolis, MN 55401.	Minneapolis, Chicago.	Illinois (northern half), Indiana (northern half), Iowa, Michigan, Minnesota, Montana, North Dakota, South Dakota, Wisconsin.
Federal Reserve Bank of Kansas City, 925 Grand Boulevard, Kansas City, MO 64106.	Dallas, San Francisco, Kansas City, St. Louis.	Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois (southern half), Indiana (southern half), Indiana (southern half), Kansas, Kentucky (western half), Louisiana (northern half), Mississippi (northern half), Missouri, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee (western half), Texas, Utah, Washington, Wyoming, Guam.

§ 351.87 May Public Debt revise, supplement or amend the terms of this offering?

We may revise, supplement or amend the terms of this offering at any time.

Appendix to Part 351—Tax Considerations

1. What are some general tax considerations?

General. Interest on savings bonds is subject to taxes imposed under the Internal Revenue Code of 1986, as amended. The bonds are exempt from taxation by any State or political subdivision of a State, except for estate or inheritance taxes. (*See* 31 U.S.C. 3124.)

2. What reporting methods are available for savings bonds?

(a) *Reporting methods.* You may use either of the following two methods for reporting

[3] Example: Calculated value of $25.044 rounds to $25.04; calculated value of $25.045 rounds to $25.05.

the increase in the redemption value of the bond for Federal income tax purposes:

(1) *Cash basis method.* You may defer reporting the increase to the year of final maturity, redemption, or other disposition, whichever is earliest; or

(2) *Accrual basis method.* You may elect to report the increase each year, in which case the election applies to all Series EE bonds that you then own, those subsequently acquired, and to any other obligations purchased on a discount basis.

(b) *Changing methods.* If you use the cash basis method, you may change to the accrual basis method without obtaining permission from the Internal Revenue Service. However, once you elect to use the accrual basis method in paragraph (a)(2), you may change the method of reporting the increase only by following the specific procedures prescribed by the Internal Revenue Service for making a method change. For further information, you may contact the Internal Revenue Service director for your area, or the Internal Revenue Service, Washington, DC 20224.

3. What transactions have potential tax consequences?

The following types of transactions, among others, may have potential tax consequences:

(a) A reissue that affects the rights of any of the persons named on a definitive Series EE savings bond may have tax consequences for the owner.

(b) The transfer of a book-entry Series EE savings bond from one owner to another may have tax consequences for the transferor.

(c) The redemption of a book-entry Series EE savings bond by the secondary owner may have tax consequences for the primary owner.

(d) The purchase of a Series EE savings bond as a gift may have gift tax consequences.

PART 353—REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, SERIES EE AND HH

■ 5. The authority citation for part 353 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105, 3125.

■ 6. Revise § 353.0 to read as follows:

§ 353.0 Applicability.

(a) The regulation in this part govern definitive (paper) United States Savings Bonds of Series EE and Series HH. These bonds bear issue dates of January 1, 1980, or thereafter.

(b) The regulations in 31 CFR part 315 govern all other definitive United States Savings Bonds and Savings Notes.

(c) The regulations in 31 CFR part 363 govern Series EE savings bonds held in book-entry form in New Treasury Direct.

■ 7. Amend § 353.2 by revising paragraph (a) to read as follows:

§ 353.2 Definitions.

(a) *Bond, or Series EE or HH savings bond,* as used in this part, means a definitive United States Savings Bond of Series EE or HH.

* * * * *

■ 8. Amend § 353.10 (a) by removing the parenthetical term ''face amount'' and adding in its place the parenthetical term ''principal amount'' in the introductory paragraph.

■ 9. Amend § 353.11 by revising paragraph (b)(3) to read as follows:

§ 353.11 Computation of amount.

* * * * *

(b) * * *

(3) All bonds registered in the name of that person as first-named coowner.

* * * * *

■ 10. Revise § 353.12 to read as follows:

§ 353.12 Disposition of excess.

If any person at any time has savings bonds issued during any one calendar year in excess of the prescribed amount, the Bureau of the Public Debt reserves the right to take any action that it deems necessary to adjust the excess. Instructions for adjustment of the excess can be obtained by email at <*savbonds@bpd.treas.gov*> or by writing to Bureau of the Public Debt, Parkersburg, WV 26106–1328.

■ 11. Revise § 353.71 to read as follows:

§ 353.71 Decedent's estate

(a) *Estate is being administered.* (1) Appropriate proof of appointment will be required for the legal representative of the estate. Letters of appointment must be dated within one year of submission.

(2) The bonds will be registered in the following form: ''John Doe, SSN 123–45–6789, Legal Representative of the estate of James Doe, deceased, SSN 987–65–4321.''

(3) The legal representative of the estate may request payment of bonds and held payments belonging to a decedent's estate, to the estate or to the person(s) entitled, or may have the bonds reissued to the person(s) entitled.

(b) *Estate has been settled previously.* If the estate has been previously settled through judicial proceedings, the person(s) entitled may request payment of bonds or may have the bonds reissued to the person(s) entitled. A certified copy of the court-approved final accounting for the estate, the court's decree of distribution, or other appropriate evidence will be required.

(c) *Summary administration procedures.* If there is no formal administration and no representative of the estate is to be appointed, the person(s) entitled under state law summary or small estates procedures may request payment of bonds or may have the bonds reissued to the person(s) entitled. Appropriate evidence is required.

(d) *Survivors' order of precedence for payment or transfer.* Estates with bonds over $100,000 redemption value must be administered. If there has been no administration, no administration is pending or contemplated, no summary or small estate procedures have been used, and the redemption value of the bonds is $100,000 or less, then bonds may be paid or reissued to the persons named in the following order of precedence:

(1) There is a surviving spouse and no surviving child or descendant of a deceased child: to the surviving spouse.

(2) There is a surviving spouse and a child or children of the decedent, or descendants of deceased children: one-half to the surviving spouse and one-half to the child or children of the decedent, and the descendants of deceased children, by representation, or by agreement of all persons entitled in this class;

(3) There is no surviving spouse and there is a surviving child or descendant of deceased children: to the child or children of the decedent, and the descendants of deceased children, by representation.

(4) There are no surviving spouse, no surviving child, and no surviving descendants of deceased children: to the parents of the decedent, one-half to each, or in full to the survivor.

(5) There are no surviving spouse, no surviving child or surviving descendants of deceased children, and no surviving parents: to the brothers and sisters and descendants of deceased brothers and sisters by representation.

(6) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, and no brothers or sisters or descendants of deceased brothers and sisters: to other next of kin, as determined by the laws of the decedent's domicile at the time of death.

(7) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, no brothers or sisters or descendants of deceased brothers and sisters, and no next of kin, as determined by the laws of the decedent's domicile at the time of death: to persons related to the decedent by marriage, *i.e.*, heirs of a spouse of the last decedent where the spouse predeceased that registrant.

(8) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, no brothers or sisters or descendants of deceased brothers and

sisters, no next of kin, as determined by the laws of the decedent's domicile at the time of death, and no persons related to the decedent by marriage: to the person who paid the burial and funeral expenses, or a creditor of the decedent's estate, but payment may be made only to the extent that the person has not been reimbursed. Transfers are not permitted.

(9) Escheat according to the applicable state law.

(e) When we make payments or reissues according to paragraph (d) of this section, we will make the payments to either a person individually, or individually and on behalf of all other persons entitled. A person who receives payment of bond proceeds individually and on behalf of others warrants that he or she will make distribution of the proceeds to the persons entitled by the law of the decedent's domicile. The provisions of this section are for the convenience of the United States and do not determine ownership of the bonds or their proceeds. The Department of the Treasury may rely on information provided by the person who requests payment or transfer, and is not liable for any action taken in reliance on the information furnished.

§ 353.72 [Reserved]

■ 12. Remove and reserve § 353.72.

PART 359—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES I

■ 13. The authority citation for part 359 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

■ 14. Revise § 359.50 to read as follows:

§ 359.50 What amount of book-entry Series I savings bonds may I acquire per year?

The principal amount of book-entry bonds that you may acquire in any calendar year is limited to $30,000.

■ 15. Revise § 359.51 to read as follows:

§ 359.51 What book-entry Series I savings bonds are included in the computation?

(a) We include all bonds that you purchased in that calendar year.

(b) Bonds purchased as gifts or in a fiduciary capacity are not included in the computation for the purchaser.

(c) Bonds transferred or delivered from one New Treasury Direct account to another New Treasury Direct account are included in the computation for the recipient, unless you have become entitled to the transferred bonds due to the death of the registered owner.

§ 359.65 [Reserved]

■ 16. Remove and reserve § 359.65.

■ 17. Revise Appendix D to Part 359, Section 1, to read as follows:

Appendix D to Part 359—Tax Considerations

1. What are some general tax considerations?

Interest on savings bonds is subject to taxes imposed under the Internal Revenue Code of 1986, as amended. The bonds are exempt from taxation by any State or political subdivision of a State, except for estate or inheritance taxes. (*See* 31 U.S.C. 3124.)

* * * * *

PART 360—REGULATIONS GOVERNING DEFINITIVE UNITED STATES SAVINGS BONDS, SERIES I

■ 18. The authority citation for part 360 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3105 and 3125.

■ 19. Revise § 360.71 to read as follows:

§ 360.71 Decedent's estate.

(a) *Estate is being administered.* (1) Appropriate proof of appointment will be required for the legal representative of the estate. Letters of appointment must be dated within one year of submission.

(2) The bonds will be registered in the following form: ''John Doe, SSN 123–45–6789, Legal Representative of the estate of James Doe, deceased, SSN 987–65–4321.''

(3) The legal representative of the estate may request payment of bonds and held payments belonging to a decedent's estate to the estate or to the person(s) entitled, or may have the bonds reissued to the person(s) entitled.

(b) *Estate has been settled previously.* If the estate has been previously settled through judicial proceedings, the person(s) entitled may request payment of bonds or may have the bonds reissued to the person(s) entitled. A certified copy of the court-approved final accounting for the estate, the court's decree of distribution, or other appropriate evidence will be required.

(c) *Summary administration procedures.* If there is no formal administration and no representative of the estate is to be appointed, the person(s) entitled under state law summary or small estates procedures may request payment of bonds or may have the bonds reissued to the person(s) entitled. Appropriate evidence is required.

(d) *Survivors' order of precedence for payment or transfer.* Estates with bonds over $100,000 redemption value must be administered. If there has been no administration, no administration is pending or contemplated, no summary or small estate procedures have been used, and the redemption value of the bonds is $100,000 or less, then bonds may be paid or reissued to the persons named in the following order of precedence:

(1) There is a surviving spouse and no surviving child or descendant of a deceased child: to the surviving spouse.

(2) There is a surviving spouse and a child or children of the decedent, or descendants of deceased children: One-half to the surviving spouse and one-half to the child or children of the decedent, and the descendants of deceased children, by representation, or by agreement of all persons entitled in this class;

(3) There is no surviving spouse and there is a surviving child or descendant of deceased children: to the child or children of the decedent, and the descendants of deceased children, by representation.

(4) There are no surviving spouse, no surviving child, and no surviving descendants of deceased children: To the parents of the decedent, one-half to each, or in full to the survivor.

(5) There are no surviving spouse, no surviving child or surviving descendants of deceased children, and no surviving parents: to the brothers and sisters and descendants of deceased brothers and sisters by representation.

(6) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, and no brothers or sisters or descendants of deceased brothers and sisters: To other next of kin, as determined by the laws of the decedent's domicile at the time of death.

(7) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, no brothers or sisters or descendants of deceased brothers and sisters, and no next of kin, as determined by the laws of the decedent's domicile at the time of death: To persons related to the decedent by marriage, *i.e.*, heirs of a spouse of the last decedent where the spouse predeceased that registrant.

(8) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, no brothers or sisters or descendants of deceased brothers and sisters, no next of kin, as determined by the laws of the decedent's domicile at the time of death, and no persons related to the decedent by marriage: To the person who paid the burial and funeral expenses, or a creditor of the decedent's estate, but payment may be

made only to the extent that the person has not been reimbursed. Transfers are not permitted.

(9) Escheat according to the applicable state law.

(e) When we make payments or reissues according to paragraph (d) of this section, we will make the payments to either a person individually, or individually and on behalf of all other persons entitled. A person who receives payment of bond proceeds individually and on behalf of others warrants that he or she will make distribution of the proceeds to the persons entitled by the law of the decedent's domicile. The provisions of this section are for the convenience of the United States and do not determine ownership of the bonds or their proceeds. The Department of the Treasury may rely on information provided by the person who requests payment or transfer, and is not liable for any action taken in reliance on the information furnished.

§ 360.72 [Reserved]

■ 20. Remove and reserve § 360.72.

PART 363—REGULATIONS GOVERNING SECURITIES HELD IN THE NEW TREASURY DIRECT SYSTEM

■ 21. The authority citation for part 363 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3102, *et seq.*, 3105 and 3125.

■ 22. Revise § 363.3 to read as follows:

§ 363.3 What Treasury securities may be held in New Treasury Direct?

Book-entry Series EE and I savings bonds may be held in New Treasury Direct.

■ 23. Amend § 363.6 by adding the following definition in alphabetical order:

§ 363.6 What special terms do I need to know to understand this part?

* * * * *

Series EE savings bond is an accrual-type savings bond, either in definitive (paper) form or in book-entry form, that pays interest on the principal based on rates determined by Treasury.

* * * * *

■ 24. Amend § 363.34 by removing the word ''written'' from the section.

§ 363.38 [Amended]

■ 25. Amend the section heading for § 363.38 by removing the term ''Series I'' from the heading.

§ 363.51 [Amended]

■ 26. Amend the section heading for § 363.51 by removing the term ''Series I'' from the heading.

§§ 363.53–363.54 [Amended]

■ 27. Amend the section headings for §§ 363.53–363.54 by removing the term ''Series I'' from each heading.

§§ 363.56–363.58 [Amended]

■ 28. Amend the section headings for §§ 363.56–363.58 by removing the term ''Series I'' from each heading.

§§ 363.65–363.66 [Amended]

■ 29. Amend the section headings for §§ 363.65–363.66 by removing the term ''Series I'' from each heading.

§§ 363.80–363.83 [Amended]

■ 30. Amend the section headings for §§ 363.80–363.83 by removing the term ''Series I'' from each heading.

§ 363.85 [Amended]

■ 31. Amend the section heading for § 363.85 by removing the term ''Series I'' from the heading.

§ 363.90 [Amended]

■ 32. Amend the section heading for § 363.90 by removing the term ''Series I'' from the heading.

§ 363.95 [Amended]

■ 33. Amend the section heading for § 363.95 by removing the term ''Series I'' from the heading.

§ 363.97 [Amended]

■ 34. Amend the section heading for § 363.97 by removing the term ''Series I'' from the heading.

§§ 363.105–363.106 [Amended]

■ 35. Amend the section heading for §§ 363.105–363.106 by removing the term ''Series I'' from each heading.

§§ 363.111–363.113 [Amended]

■ 36. Amend the section heading for §§ 363.111–363.113 by removing the term ''Series I'' from each heading.

§ 363.125 [Amended]

■ 37. Amend the section heading for § 363.125 by removing the term ''Series I'' from the heading.

Subpart C—Book-Entry Savings Bonds Purchased Through New Treasury Direct

■ 38. Amend the heading for Subpart C by revising it to read as set forth above.

■ 39. Revise § 363.50 to read as follows:

§ 363.50 What Treasury securities does this subpart cover?

This subpart covers Series EE and I book-entry savings bonds. The offering of Series EE savings bonds is contained in 31 CFR part 351. The offering of Series I savings bonds is contained in 31 CFR part 359.

■ 40. Amend § 363.52 by revising the heading and paragraph (a) to read as follows:

§ 363.52 What amount of book-entry Series EE and I savings bonds may I purchase in one year?

(a) *Purchase limitation.* The amount of bonds that you may purchase in any calendar year is limited to $30,000 for Series EE savings bonds, and $30,000 for Series I savings bonds.

* * * * *

■ 41. Amend § 363.55(b) and (d) by removing the term ''Series I'' from the text of each paragraph.

§ 363.95 [Amended]

■ 42. Amend § 363.95 by removing the term ''Series I'' from the introductory sentence.

§ 363.111 [Amended]

■ 43. Amend § 363.111 by removing the term ''Series I'' from the text of the section.

§ 363.112 [Amended]

■ 44. Amend § 363.112 by removing the term ''Series I'' from the text of the section.

§ 363.114 [Amended]

■ 45. Amend § 363.114 by removing the term ''Series I'' from the first sentence.

Dated: May 2, 2003.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 03–11403 Filed 5–5–03; 11:29 am]

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Federal Register

Thursday,
May 8, 2003

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 119, et al.
Hazardous Materials Training Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 135, and 145

[Docket No. FAA–2003–15085; Notice No. 03–08]

RIN 2120–AG75

Hazardous Materials Training Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) is proposing to amend its hazardous materials (hazmat) training requirements for certain air carriers and commercial operators. In addition, the FAA is proposing that certain repair stations document for the FAA that persons handling hazmat for transportation have been trained as required by the Department of Transportation's Hazardous Materials Regulations (HMRs). The FAA is updating its regulations because hazmat transport and the aviation industry have changed significantly since the FAA promulgated its hazmat training regulations over 25 years ago. The proposed rule would set clear training standards and ensure uniform compliance with training requirements.

DATES: Send your comments on or before July 7, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh St., SW., Washington, DC 20591. You must identify the docket number (FAA–2003–15085) at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets office is on the plaza level of the Department of Transportation at the address above. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: William Wilkening, Hazardous Materials Division, ASI–300, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone (202) 267–9864; facsmilie (202) 267–9788.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the environment, energy, federalism, or economic impact that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the addresses in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

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

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy of this document from the Internet by taking the following steps:

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List of Abbreviations and Acronyms Used in This Document

AC—Advisory Circular
COMAT—Material owned or used by a certificate holder, commonly referred to as "company material"
Hazmat—Hazardous material
HMRs—Department of Transportation's Hazardous Materials Regulations found in 49 CFR parts 171 through 180
ICAO—International Civil Aviation Organization
NTSB—National Transportation Safety Board
RSPA—Research and Special Programs Administration
SFAR—Special Federal Aviation Regulation
TRF—Transport-related function, *i.e.*, any function performed for the certificate holder relating to the acceptance, rejection, storage incidental to transport, handling, packaging of COMAT, loading, unloading or carriage of items for transport on board an aircraft
USPS—United States Postal Service
Will-carry operator—An operator authorized in its operations specifications to carry hazmat
Will-not-carry operator—An operator prohibited in its operations specifications from carrying hazmat that requires declaration under the HMRs

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I. Background

A. Purpose of the Proposed Rule

The FAA regulations that prescribe hazmat training for air carriers and commercial operators conducting operations under part 121 or part 135 were first adopted over 25 years ago. Since that time, hazmat transport regulation in general has changed significantly, in part because the Department of Transportation (DOT) implemented the Hazardous Materials Regulations (HMRs) in 49 CFR parts 171 through 180 (41 FR 15972; April 15, 1976), and in part because of changes following deregulation of the airline industry in the 1970s. The hazmat regulations, which include training requirements, apply to all modes of transport. Training requirements also exist in the ''Technical Instructions for the Safe Transport of Dangerous Goods by Air'' of the International Civil Aviation Organization (ICAO). In addition, the FAA has provided guidance to the industry through Advisory Circulars (ACs) to help the aviation industry to comply with the FAA's and DOT's hazmat training requirements. Information from air carriers indicates that adherence to the recommendations in ACs has been high. The ACs are not mandatory, however, and these critical safety practices need to be clearly established within the FAA's safety regulations. The FAA is proposing adding training requirements to its regulations that would set clear standards and ensure uniform compliance with training requirements for the handling of hazardous cargo. This proposed rulemaking would amend the manual and training regulations in parts 121 and 135 to incorporate most of the guidance now contained in the ACs.

For example, these proposed regulations would require certificate holders operating under part 121 or part 135 to have one of two distinct hazmat training programs. One training program would be for certificate holders electing to transport hazmat (''will-carry'' certificate holders), and the other would be for certificate holders who elect not to transport hazmat (''will-not-carry'' certificate holders). A certificate holder that elects will-carry status would have an authorization to carry hazmat in its operations specifications. For will-not-carry certificate holders, the FAA would place a prohibition against carrying hazmat subject to regulation under the HMRs in their operations specifications.

These proposed rules also would identify the persons who must receive hazmat training by the nature of the functions they perform or supervise for the certificate holders. The term ''supervise'' would be defined to mean more than just being a designated supervisor. It would cover a person who has any degree of oversight over a function addressed by the proposed rule. Will-carry certificate holders would have to conduct extensive training for persons supervising or performing any of the following functions involving items for transport on aircraft: Acceptance, rejection, handling, storage incidental to transport, packaging of company materials owned or used by the certificate holder (known as COMAT), loading, unloading, and carriage. (This preamble refers to these functions as ''transport-related functions'' or ''TRF.'') Will-not-carry certificate holders would have to conduct training sufficient to enable the persons supervising or performing a TRF to identify material marked or labeled as hazmat, and material not marked or labeled but showing some indication that it is hazmat.

In addition to these proposed amendments, the FAA proposes to add requirements for repair stations that would allow the FAA to increase its oversight of the training they are required to conduct under the DOT's hazmat training requirements in 49 CFR part 172. This separate FAA requirement is needed because the FAA has noticed that, despite the training requirements of the HMRs, a number of aviation incidents, and at least one accident, involved hazmat handled by repair stations with inadequate training programs. The proposed rules also would amend part 145 to require that repair stations meeting the definition of ''hazmat employers'' under 49 CFR 171.8 implement a hazmat training program that satisfies 49 CFR 172.700 through 172.704.

At the time of application for a certificate, a repair station would have to certify to the FAA that all hazmat employees, as defined in 49 CFR 171.8, are trained under the HMRs, and that it is otherwise in compliance with the training requirements of the HMRs. The applicant also would have to provide evidence of compliance with the HMRs. Without this evidence, the applicant would not receive a certificate.

Additionally, all repair station workers performing or supervising a TRF for a certificate holder, would have to be trained under the certificate holder's approved training program. Furthermore, a provision would be added to part 145 to require repair stations to notify all workers of the will-carry or will-not-carry status of the certificate holders for which the repair station works. This would have to be done as soon as the repair station is informed of the certificate holder's status. This proposal would be the companion requirement to the proposed notification requirement for part 121 and part 135 certificate holders. It would ensure that repair station management gives this information to its workers immediately.

B. Historical Overview

1. Agency Rulemakings for Part 121 and Part 135

The FAA's current part 121 and part 135 hazmat training and manual requirements were adopted on June 7, 1973 (38 FR 14914). That rulemaking added § 121.433a to require hazmat training for persons performing any duty involving handling or carriage of hazmat. Section 121.401 was amended to include this training in the certificate holder's training program. Section 121.135 (b)(12) was amended to require certificate holders to include in their manuals procedures and instructions for recognizing hazmat, and instructions for the proper carriage, storage, and handling of these materials.

The same rulemaking added § 135.140 to require hazmat training provisions for part 135 certificate holders. These part 135 requirements were similar to those in part 121, but with one important difference. Part 135 distinguished between will-carry and will-not-carry certificate holders. The preamble stated that the intent of the rule was to require a ''part 135 certificate holder to provide a program of training only if it undertakes to engage in the transportation of hazardous materials.'' Thus, only part 135 will-carry certificate holders were required to have a hazmat training program. In contrast, all part 121 certificate holders were required to have training programs.

A year and a half later, on January 3, 1975, the Hazardous Materials Transportation Act (HMTA), Title I of Public Law 93–633, was enacted. The HMTA gave the Secretary of

Transportation the authority to consolidate hazmat regulations of the various transportation modes. On April 15, 1976, using this authority, the Materials Transportation Bureau (the predecessor of the Research and Special Programs Administration (RSPA)) consolidated all hazmat regulations of the various DOT modal administrations into one set of regulations for air, water, and surface transportation of hazmat (41 FR 15972). These consolidated regulations were published in 49 CFR parts 100 through 180. In response, the FAA removed its hazmat regulations from 14 CFR part 103, but it did not remove the hazmat training and manual requirements from part 121 and part 135. These regulations remained because they were an integral part of the certification requirements and operating rules for part 121 and part 135 certificate holders.

On May 25, 1978 (43 FR 22643), the FAA amended § 121.433a to add paragraph (c) allowing certificate holders operating in foreign locations to use personnel not trained under the certificate holder's hazmat training program to load and unload aircraft. These persons, however, must be under the supervision of someone who has successfully completed the certificate holder's approved training program. The amendment also allowed flight crewmembers to complete recurrent training a month before or a month after the actual due date.

On October 10, 1978, the FAA substantially rewrote part 135 (43 FR 46742). As part of that final rule, the FAA added § 135.23(p) to require each certificate holder, whether or not it carries hazmat, to include hazmat recognition procedures and instructions in its manual. Will-carry certificate holders had to include in their manuals detailed procedures and instructions for handling and carrying hazmat.

More significantly, the October 1978 rule, added training requirements for will-not-carry certificate holders. They were required to train their crewmembers to recognize hazmat. The new training requirement was put in part 135 because of a number of incidents where a will-not-carry certificate holder inadvertently accepted hazmat because its employees did not recognize it. Part 135 hazmat recognition training, however, was limited to crewmembers.

After deregulation of the airline industry, the FAA allowed a number of part 121 certificate holders to elect will-not-carry status and to provide only general awareness/recognition of hazmat training. In accordance with this practice, on July 10, 1980 (45 FR 46736), the FAA amended part 121 manual requirements to require will-not-carry certificate holders to have procedures and instructions in sufficient detail to assist personnel in identifying packages marked or labeled as containing hazmat. The training requirements in § 121.433a, however, were not modified to incorporate a ''recognition training'' requirement for part 121 will-not-carry certificate holders. The FAA believes that most, if not all, part 121 certificate holders provide hazmat recognition training, but, to ensure that this training does occur, the FAA believes that these training requirements should be clearly stated in the regulations.

2. Advisory Circulars

In 1984, the FAA issued an AC providing certificate holders with information on 49 CFR parts 171 through 180, and the ICAO's ''Technical Instructions for the Safe Transport of Dangerous Goods by Air'' (AC 121–21B, entitled ''Information Guide for Training Programs and Manual Requirements in the Air Transportation of Hazardous Materials''). The AC also provided a recommended training curriculum. This curriculum pre-dated DOT's passage of more specific hazmat training requirements in 49 CFR 172.700 through 172.704. The AC also encouraged will-not-carry certificate holders to ensure ''that their personnel (including crewmembers) are adequately trained to recognize those items which can be classified as hazardous materials.''

3. Training Requirements for Repair Stations

The recent hazmat incident and accident history indicates that additional requirements are needed to ensure that repair stations are doing the training required by the HMRs. In August 1997, the National Transportation Safety Board (NTSB) issued its final report on its investigation into the crash of ValuJet Airlines Flight No. 592 (''In-Flight Fire and Impact With Terrain, ValuJet Airlines Flight 592''). The report concluded that if ValuJet had implemented a hazmat recognition training program for its repair station employees, and in it had notified those employees of Valujet's will-not-carry status and its implications, SabreTech (Valujet's repair station) might not have mishandled the packaging and shipment of the chemical oxygen generators that were loaded onto the aircraft. Thus, NTSB recommended that the FAA:

> Require air carriers to ensure that maintenance facility personnel, including mechanics, shipping, receiving, and stores personnel at air carrier operated or subcontractor facilities are provided initial and recurrent training in hazardous materials recognition and in proper labeling, packaging and shipment procedures with respect to the specific items of hazardous materials that are handled by the air carrier's maintenance functions.

The FAA currently has no separate hazmat training requirement for part 145 repair stations that use, offer for transport, or otherwise handle hazmat. However, DOT's hazmat training requirements in 49 CFR part 172, apply to these repair stations. Yet, even with the heightened awareness of the dangers of oxygen generators since the crash of Valujet Airlines Flight 592, the FAA continues to find hazmat, including oxygen generators, that have been improperly prepared and offered for shipment by air carriers and repair stations. The FAA believes that the DOT training requirements need to be referenced in the FAA's rules concerning repair stations. This will ensure that repair stations are aware of them, and make retention of their repair station certificate subject to compliance with them.

C. Relationship Between FAA and DOT Training Requirements

The DOT's HMRs (49 CFR parts 171 through 180) clearly apply to air carriers and repair stations that transport hazmat. They require all ''hazmat employers'' to train ''hazmat employees'' pursuant to 49 CFR 172.700 through 172.704. The terms ''hazmat employer'' and ''hazmat employee'' are defined in 49 CFR 171.8. ''Hazmat employee'' includes anyone who directly affects transportation safety by performing a function regulated by the HMRs. ''Hazmat employer'' is defined as ''a person who uses one or more of its employees in connection with: Transporting hazardous materials in commerce; causing hazardous materials to be shipped in commerce; or representing, marking, certifying, selling, offering, manufacturing, reconditioning, testing, repairing, or modifying containers, drums or packagings as qualified for use in the transportation of hazardous materials.'' Under DOT's regulations, however, there is no training requirement placed upon employers or employees who are not ''hazmat employers'' or ''hazmat employees.'' Thus, there are no hazmat recognition training requirements in DOT's HMRs for the employees of will-not-carry certificate holders who are not supposed to handle or transport hazmat. The FAA in this proposal recognizes that employees who are not supposed to accept, handle, or carry hazmat need adequate training to recognize and

appropriately reject it to prevent the improper carriage of hazmat by will-not-carry certificate holders. It should be noted that even a will-not-carry certificate holder that does not handle hazmat from the public for transport may be a hazmat employer with respect to aircraft components, consumable materials, or other items of its own or another carrier.

D. United States Mail as Cargo

Significant amounts of mail are transported as cargo by part 121 and part 135 certificate holders. Thus, certificate holders and persons acting for certificate holders perform a TRF when accepting mail for transport on an aircraft. In 1990, the U.S. mail and the U.S. Postal Service (USPS) were expressly excluded from the reach of the Federal hazardous materials transportation law (Hazardous Materials Transportation Uniform Safety Act of 1990, Pub. L. 101–615, 1990 (49 U.S.C. App. 1801 note). The USPS has its own regulations that control the transportation of hazmat in the mail (Domestic Mail Manual (DMM), C023, revised in Postal Bulletin 21997, May 6, 1999). Generally, the USPS accepts only limited quantities and classes of hazardous materials. It requires hazmat offered for transportation by air to be segregated and properly identified. The USPS standards cross-reference the HMRs and recognize the hazmat classifications, labeling and marking requirements of the HMRs. The FAA has received reports from certificate holders concerning mail cargo that did not comply with USPS requirements or the conditions of the contract of carriage between the certificate holder and the USPS. These proposed rules therefore include a training topic under proposed Module 12, Dangerous Goods Exceptions, that addresses the mail and USPS standards concerning the restrictions on hazmat in the mail and air transportation of mail.

II. Discussion of Proposals

A. Part 119—Special Federal Aviation Regulation (SFAR) No. 99

The FAA recognizes that part 121 or part 135 certificate holders would need a reasonable period of time to implement these proposed regulations. Thus, the FAA is proposing to provide a 15-month transition period to allow certificate holders certificated on or before the effective date of the final rule to bring their hazmat training programs into compliance. During this transition period, these certificate holders could continue to comply with the current requirements or comply with these proposed new rules. Certificate holders certificated after the effective date of the final rule would have to comply with the new hazmat training requirements immediately upon certification. At the end of the transition period, all certificate holders would be required to comply with the new training requirements.

The FAA proposes to move all existing hazmat training requirements in §§ 121.401(a)(1), 121.433a, 135.323(a)(1), and 135.333 into Special Federal Aviation Regulation (SFAR) No. 99 to make it easier for certificate holders to identify existing requirements and distinguish them from new requirements, which would be in parts 121 and 135. The SFAR would expire at the end of the 15-month transition period.

B. Section 119.49—Contents of Operations Specifications

Section 119.49(a)(13) would be amended to provide that a certificate holder's operations specifications would include either an authorization permitting the certificate holder to handle and transport hazmat (will-carry certificate holder) or a prohibition against handling and transporting hazmat (will-not-carry certificate holder). Current language of (a)(13) providing that operations specifications may include any other item the Administrator deems necessary would be redesignated as new (a)(14).

C. Sections 121.135 and 135.23—Manual Contents

This proposed rule would amend the manual requirements at 14 CFR 121.135(b)(23) and 135.23(p) to require both will-carry and will-not-carry certificate holders to include procedures and information in their manuals to assist each person performing or supervising a TRF in recognizing hazmat. A certificate holder authorized as a will-carry operator would be required to provide additional procedures and information in its manual. The proposed rule would apply to full time and part time employees of a certificate holder or a contractor or subcontractor, and any other person who performs or supervises a TRF for a certificate holder under any other arrangement. This more extensive language is necessary because the current manual requirements do not clearly identify the person covered by the requirements. The current rule language merely states that the procedures and information must be included in the manual to ''assist personnel to identify packages marked or labeled as containing hazardous materials * * *.'' Furthermore, in order to emphasize that the manual applies to all persons working for the certificate holder, whether or not directly employed by the certificate holder, the FAA proposes to replace the term ''personnel'' with the term ''person.''

The proposed language of §§ 121.135 (b)(23) and 135.23(p) would require a two-tiered approach to the hazmat portion of the certificate holder's manual: Those requirements applying to both will-carry and will-not-carry certificate holders, and those requirements applying only to will-carry certificate holders.

Unlike the current rule language, the proposed amendments to §§ 121.135 (b)(23) and 135.23(p) would require both will-carry and will-not-carry certificate holders to provide procedures for rejecting packages that are not prepared and offered for shipment under the HMRs in 49 CFR parts 171 through 180, or that appear to contain undeclared hazmat. This change is needed because the current rule language only refers to identifying or recognizing packages marked and labeled as hazmat. The FAA believes that a certificate holder's manual should include procedures for rejecting known hazmat that is not properly offered for transport in compliance with DOT's HMRs. Thus, the rule would apply to materials appearing to be undeclared hazmat. The FAA has found that in many cases packages not marked and labeled as hazmat still display indicators that would lead a trained person to suspect the presence of hazmat. For example, terms such as ''chemicals,'' ''lighters,'' ''paint,'' or ''solvents'' on packages or in documents accompanying the package may indicate the possible presence of an undeclared hazmat. Additionally, trigger lists can be used to help alert persons to the possible presence of hazmat in items not properly identified as hazmat. These items include gasoline-powered equipment (chainsaws, generators, or aviation fuel control units) not purged of their hazardous contents, and perishable goods shipped with dry ice, which is a regulated hazmat.

If this rule is adopted, persons would be trained to recognize items not properly identified as hazmat. Furthermore, the proposed rule would require both will-carry and will-not-carry certificate holders to include in their manuals procedures and information regarding notifying DOT of hazmat incidents. (See proposed §§ 121.135(b)(23)(ii)(B) and 135.23 (p)(2)(ii)). This information would have to be provided to each person performing or supervising a TRF. In

contrast, the current rule language requires a certificate holder to include this information in its manual only if the certificate holder has will-carry status.

A certificate holder may carry hazmat in accordance with 49 CFR 175.10. Training for recognition of the hazardous materials excepted from 49 CFR would be included in the will-carry and will-not-carry training programs.

The proposed rule also would require the manual to indicate whether a certificate holder is a will-carry or will-not-carry operator, as specified in its operations specifications. (See proposed §§ 121.135(b)(23)(ii)(C) and 135.23(p)(2)(iii)). This information currently does not have to be in the certificate holder's manual.

Certificate holders electing will-carry status would be required to provide procedures and information to ensure that: (1) The packages containing hazmats are properly offered, accepted, handled, stored, packaged, loaded, unloaded and carried on the aircraft in compliance with DOT's HMRs; (2) DOT requirements regarding discrepancy reporting (§ 175.31) and notice to the pilot in command (§ 175.33) are met; and (3) aircraft replacement parts shipped as COMAT, consumable materials, and any other item regulated under the HMRs, are properly handled, packaged, and carried on board an aircraft.

As noted above, if the proposed changes are adopted, certificate holders certificated on or before the effective date of the final rule would have 15 months from the effective date to revise their manuals and implement the changes. Current §§ 121.135(b) and 135.23(p) would be placed in SFAR No. 99 (discussed under II.A.), which would expire at the end of the 15-month transition period. Applicants certificated after the effective date of the final rule to operate under part 121 or 135 would be subject to the new requirements upon certification.

D. Sections 121.401(a)(1), 121.433a, 135.323(a)(1), and 135.333—Transfer of Hazmat Provisions to SFAR

The hazmat requirements currently in §§ 121.401(a)(1), 121.433a, 135.323(a)(1), and 135.333 would be moved to SFAR No. 99, which would remain in effect for the 15-month transition period, as discussed under II.A. Sections 121.401(a)(1) and 135.323(a)(1) would be revised to continue to require crewmember training other than hazmat. New subparts in parts 121 and 135 (discussed under II.E.) would contain revised hazmat training requirements. A new §§ 121.802 and 135.502 would require the hazmat training for part 119 certificate holders conducting operations in accordance with part 121 or part 135. This reorganization would provide needed separate emphasis for hazmat training.

E. Part 121, Subpart Y, and Part 135, Subpart K—Hazardous Materials Training Program

The proposed hazmat training rules in part 121, subpart Y, and part 135, subpart K, would require all air carriers and commercial operators to train each person who may perform or supervise a TRF. The FAA believes that adequate training of each person involved in a TRF would greatly enhance safety in air transportation and help avoid life-threatening incidents. Moreover, given the frequency of undeclared hazmat incidents, the FAA believes that a broader training curriculum, which includes hazmat recognition training, should be mandated for all part 121 and part 135 certificate holders.

Because the changes that are proposed to the manual and training requirements in parts 121 and 135 are virtually identical, this discussion of the individual sections will address the changes to the parallel provisions of these parts together.

1. Applicability and Definitions (§§ 121.801 and 135.501)

These proposed provisions would clarify that the new subparts prescribe requirements for certificate holders for training persons performing or supervising a TRF, whether the certificate holder is a will-carry or will-not-carry operator. The will-carry or will-not-carry status would be relevant only to the nature of the training curriculum, not to the requirement to train. The proposed rules would be broader than the current requirements in §§ 121.433a and 135.333, which apply only to persons handling or carrying hazardous materials.

Paragraph (a): The proposal would cover persons who perform or supervise any function for a certificate holder in the transport of an item on board an aircraft, whether or not an item is, or contains, a hazmat. The proposed rules would include ground-handling personnel, passenger check-in personnel, skycaps, cargo acceptance personnel, maintenance shop personnel, shipping and receiving personnel, and their supervisors.

Currently, §§ 121.433a and 135.333 forbid certificate holders from using a person to perform, and forbids a person from performing, ''any assigned duties and responsibilities for the handling or carriage of dangerous articles and magnetized materials governed by Title 49 CFR'' unless the person has been trained. The proposed applicability provisions in §§ 121.801 and 135.501 are intended to be broad enough to cover not only those persons directly performing a TRF, but also those persons supervising the performance of a TRF. Whether a person were officially assigned to perform a function would be irrelevant. This would ensure that the certificate holder identifies and trains each person who could reasonably be foreseen as performing or supervising a TRF, whether or not it is part of his or her job description.

Paragraph (b): Sections 121.801(b) and 135.501(b) would define ''initial hazardous materials training'' and ''recurrent hazardous materials training.''

Paragraph (b)(1) would define ''Company material (COMAT)'' as material owned or used by the certificate holder. COMAT is a term of art used in the aviation industry. It is used in the proposed rule to ensure that persons are trained to understand that hazardous COMAT must be marked, labeled, and identified as hazmat, and that there is no exception for the carriage of hazardous COMAT even by will-not-carry certificate holders.

Paragraph (b)(2) would define ''initial hazardous materials training'' consistent with the initial training required by 49 CFR 172.704, although 49 CFR does not specifically define initial hazmat training.

Paragraph (b)(3) would define ''recurrent hazardous materials training'' consistent with the way the term is used in 49 CFR 172.704, although it too is not a defined term in DOT's regulations. The FAA's recurrent hazardous materials training requirement, however, would be for annual training, instead of every 3 years, as required by DOT. The yearly recurrent hazardous materials training requirement is consistent with other current training requirements for part 121 and part 135 certificate holders.

2. General Requirement To Train (§§ 121.802 and 135.502)

The FAA believes that a mandated curriculum for both will-carry and will-not-carry certificate holders would improve the knowledge base of persons performing or supervising a TRF. This training would improve transportation safety by ensuring that persons perform their job functions or supervisory responsibilities under the certificate holder's hazmat policy and the DOT's HMRs.

The current regulations in parts 121 and 135 do not provide specific details on the hazmat training curriculum. Nor do the hazmat training requirements in 49 CFR part 172 provide a specific curriculum; they simply provide a general training outline that requires general awareness training, function-specific training, and safety training. As noted above, the FAA historically has provided guidance to certificate holders in the form of ACs on the suggested content of the training curriculum. This guidance has been designed to enable the certificate holders to develop a program that will be suitable for FAA approval. Under this proposal, however, the curriculum would be mandated by regulation.

Paragraph (a): Proposed §§ 121.802(a) and 135.502(a) would require all hazmat training programs to include, at a minimum, the hazmat training curriculum contained at Appendix N of part 121. (See discussion of Appendix N under II.F.) The training programs would ensure that each person performing or supervising a TRF is trained to comply with 49 CFR parts 171 through 180, and would enable trained persons to recognize items that contain, or may contain, hazmat.

Paragraph (b): The proposal envisions that a certificate holder would develop an organized training program that would build upon a person's knowledge of hazmat regulations, keep up with current requirements, and focus on any problem areas. This is consistent with current requirements. ''Initial hazardous materials training'' would be similar to initial flight and proficiency training in part 121, subpart N, except that it would apply to a broader category of persons, and the training curriculum would be hazmat-focused. With certain exceptions, each person performing or supervising a TRF would be required to receive initial hazardous materials training prior to performing or supervising that function.

Paragraph (c): Sections 121.802(c) and 135.502(c) would require the certificate holder to obtain FAA approval of the hazmat training program prior to implementing the program. This requirement would be consistent with the current training requirements in §§ 121.401 and 135.323.

3. Training Requirement (§§ 121.803 and 135.503—Paragraphs (a))

Proposed paragraphs (a) of §§ 121.803 and 135.503 would provide that no certificate holder could use any person to perform or supervise a TRF, unless that person had satisfactorily completed the certificate holder's FAA-approved initial or recurrent hazardous materials training program within the past year. (See discussion of recurrent training under II.E.6.) A person would be satisfactorily trained when that person understood the relevant training material and was capable of performing his or her job in compliance with both 49 CFR parts 171 through 180 and part 121, subpart Y, or part 135, subpart K, as applicable.

Under the proposed requirement, the certificate holder would have to ensure that each person performing or supervising a TRF completed the certificate holder's initial or recurrent hazardous materials training program within the past year. A person who has not received this training could not be used to perform or supervise a TRF, unless the conditions of an exception (discussed below) were satisfied. Example A explains how this general training requirement would work.

Example A: A flight attendant is employed by Certificate Holder A (a will-carry operator under part 121) and receives initial hazmat training appropriate for the job on March 1. On August 1 of the same year, the flight attendant leaves Certificate Holder A to work for Certificate Holder B (also a will-carry operator under part 121) as a flight attendant. Certificate Holder B cannot use the initial hazmat training provided by Certificate Holder A to satisfy its training obligation. Certificate Holder B must ensure that the flight attendant completes its approved hazmat training program before permitting the flight attendant to work in that capacity, unless the certificate holder uses the flight attendant as permitted by the exception in § 121.803(b).

4. New Hire/New Job Functions—(§§ 121.803 and 135.503—Paragraphs (b))

There would be two exceptions to §§ 121.803(a) and 135.503(a). The exceptions would apply to persons who are new hires or who are changing job functions and have not received the required initial or recurrent hazmat training for the new job function. The new hire/new job function exception would apply only to persons performing a function involving storage incidental to transport, or loading or unloading of items on an aircraft for transport. This exception could not be used for persons performing or supervising any other TRF. The exception would not apply to persons supervising a function, nor would the exception apply to someone performing a function involving a task other than storage incidental to transport, loading, or unloading. The new hire/new job function exception would apply for a period of not more than 30 days from either the date of hire or, for a change in functions, the date the person began performing the new job function.

To use this exception, the person would have to be under the direct visual supervision of another person authorized to supervise him or her by the certificate holder. The supervisor would have to have successfully completed the certificate holder's approved initial or recurrent hazardous materials training program. In addition, the certificate holder would have to comply with the recordkeeping requirements in § 121.804(b) or § 135.504(b), as appropriate. The supervisor would have to observe the untrained person's performance to ensure that the function is performed in compliance with both the FAA's regulations and the DOT's HMRs. The supervisor-to-worker ratio would be approved by the principal operations inspector or the principal security inspector. Use of a video camera would not satisfy the direct visual supervision requirement.

The proposed new hire/new job function exception would be similar to the exception in 49 CFR 172.704(c)(1) for multi-modal training in that it would apply to new hires or persons changing job functions. However, unlike the exception in 49 CFR, the proposed exception would apply only to persons performing storage, loading, or unloading functions and would be valid only for 30 days from the date of employment or a change in job function. This is more limited than the new hire/new job function exception now in 49 CFR is not limited by job function and applies for 90 days after employment or a change in job function.

5. Persons Working for More Than One Certificate Holder (§§ 121.803 and 135.503—Paragraphs (c))

The second exception to the proposed rule (proposed §§ 121.803(c) and 135.503(c)) would apply to workers who perform or supervise a TRF for more than one certificate holder. Under this exception, a certificate holder using a person to perform or supervise a TRF would need only to train that person in its own policies and procedures, in accordance with its own hazardous materials training program. The certificate holder could use this exception only if:

(1) It received written verification from an authorized, knowledgeable person representing the other certificate holder for whom the person works that the person has satisfactorily completed the other certificate holder's required initial or annual approved hazardous materials training for that specific function.

(2) The certificate holder who trained the person had the same will-carry or will-not-carry status as the certificate holder using the exception.

Example B explains how this exception would apply:

Example B: Employees at a repair station perform work for 10 will-carry certificate holders. As part of the workers' duties, they package COMAT for these certificate holders and load the packages onto aircraft for transport. All these employees performing any function involving packaging, loading, or unloading COMAT would have to be trained according to Appendix N of part 121 under at least one certificate holder's approved training program and then receive the policy and procedure training (module 13 of Appendix N of part 121) for each of the remaining nine certificate holders. The employees would have to receive this training on an annual basis. However, if a worker performing loading and unloading functions for a will-not-carry certificate holder, and then were to be used for a will-carry operator, the will-carry certificate holder could not use the exception. This employee would have to be fully trained under the will-carry certificate holder's approved hazmat training program.

The exception would minimize the training burden on certificate holders. Given the curriculum mandated, the core of each certificate holder's training program would be substantially the same. The only differences would be a certificate holder's policies and procedures for implementing the regulations. Thus, a certificate holder using a person trained by another certificate holder would only have to train that person in the way it complies with the regulations.

6. Recurrent Training (§§ 121.803 and 135.503—Paragraphs (d))

As noted above, the definition of the term ''recurrent hazardous materials training'' would be similar to the definition of ''recurrent training'' used in part 121, subpart O, for flight training. Under the proposed rule, recurrent hazardous materials training would have to be completed within a year. Thus, all persons affected by these rules would have to receive hazardous materials training once a year. However, a person would be allowed to receive recurrent hazardous materials training earlier than it is due or before the end of the month after it is due. This exception would be similar to that currently in § 121.433a(a). Thus, if recurrent hazmat training were due in January, but were completed in February, it would be considered as having been accomplished in January, and recurrent training would be due again before the end of the following January. If the training occurred before January, the anniversary month would be the month in which it occurred.

7. Notice to Repair Stations—(§§ 121.803 and 135.503—Paragraphs (e))

Based on the NTSB's report on Valujet Flight 592 and the FAA's experience with repair stations, the FAA has concluded that there should be better communication between repair stations and the certificate holders regarding the will-carry or will-not-carry status of the certificate holder. This proposed requirement would ensure that communication. Under proposed §§ 121.803(e) and 135.503(e), certificate holders would be responsible for providing written notification to each repair station that performed work on its behalf and that used or replaced consumable materials, aircraft parts, or other items regulated by 49 CFR parts 171 through 180, of its will-carry or will-not-carry status, and its policies and procedures. Additionally, the certificate holder would have to verify that the repair station was ''aware of'' its status and policies and procedures. The words ''aware of'' would mean that the certificate holder could not take care of its responsibilities under this rule simply by mailing a letter to the repair station stating whether it was a will-carry or will-not-carry operator. The certificate holder would have to communicate this policy to the repair station and ensure that management were actually aware of the certificate holder's policies and procedures regarding hazmat.

8. Foreign Locations (§§ 121.803 and 135.503—Paragraphs (f))

Proposed §§ 121.803(f) and 135.503(f) would maintain the current exception in § 121.433a for certificate holders operating at foreign locations. Under this exception, part 121 or part 135 certificate holders operating in foreign locations where they are required to use persons working in that country to load and unload aircraft could use persons even if they have not received the required hazmat training, but only if they are under the direct visual supervision of someone who has received the required initial or recurrent training. This exception would apply to those persons loading or unloading an item onto or off of an aircraft.

''Direct visual supervision'' in paragraph (f) would mean the same as it would for the new hire/new job function exception.

9. Recordkeeping Requirements (§§ 121.804 and 135.504)

Current §§ 121.433a(b) and 135.333(b) require records to be maintained for initial and recurrent hazmat training given to crewmembers and ground personnel ''who perform assigned duties and responsibilities for the handling and carriage of dangerous articles and magnetized materials.''

Paragraph (a): Proposed §§ 121.804(a) and 135.504(a) would require each certificate holder to maintain training records of all initial and recurrent training received within the preceding 3 years for all categories of persons listed in Appendix N of part 121 performing or supervising a TRF for 90 days after they stop performing or supervising TRFs. This length of time would be identical to that required by 49 CFR 172.704(d). The certificate holder would be responsible for maintaining records of anyone who performed work for the certificate holder including direct employees, contractors, subcontractors, and any other person performing or supervising a TRF.

Paragraph (b): Proposed paragraph (b) would require that these records be maintained at the current location the trained person performs or supervises the TRF. When that person ceases to perform such a function, the records must be maintained at the last location for 90 days.

Paragraph (c): Under proposed §§ 121.804(c) and 135.504(c), the information maintained would be more specific than that required by 49 CFR 172.704(d). In addition to the person's name, the proposed rule would require the following:

(1) The function performed or supervised;

(2) The dates of each training course successfully completed for the preceding 3 years;

(3) A statement signed and dated by a person designated by the Director of Training certifying that the person has completed training in accordance with the certificate holder's approved hazardous materials training program; and

(4) A description of each training course successfully completed by that person that would include for each course:

- The date of the course,
- Its subject matter of the course or training area covered;
- The number of course hours;
- The instructor's name and signature indicating the person's successful completion of the course, and the person's name and signature indicating the person's attendance; and

• The name and business address of the organization or professional instructor who provided the training.

The current FAA rules do not specify information that must be contained in the training record; however, since 1990, DOT's HMRs have specified it. Section 172.704(d) of 49 CFR specifies that the record must contain the hazmat employee's name; the most recent training completion date; a description, copy, or location of the training materials used in the training; the name and address of the person providing the training; and certification that the hazmat employee has been trained and tested as required. DOT's HMRs already require hazmat employers (will-carry certificate holders) to maintain records that include the preceding 3 years for all persons defined under 49 CFR 171.8 as hazmat employees. Thus, to the extent that the training curriculum prescribed in the proposed regulations would be used to comply with the training requirement in DOT's HMRs, the requirement is duplicative. However, because the proposed training program covers more categories of persons than the recordkeeping requirements in 49 CFR, the duplication would be necessary. The proposed recordkeeping provision also would require more extensive information on the classes attended by the affected persons. The proposed recordkeeping rules would enable the FAA to monitor compliance with the hazmat training requirements and assess the quality of training provided to persons who would be covered by this rule.

Paragraph (d): Proposed §§ 121.804(d) and 135.504(d) would also contain a recordkeeping requirement for a certificate holder using the new hire/new job function exception. This requirement would be necessary to monitor compliance with the new exception. Under the proposed requirements, a certificate holder using a person under the exception in § 121.803(b) or 135.503(b) would have to maintain a record that included:

(1) A signed statement from an authorized representative of the certificate holder authorizing the use of the person in accordance with the exception;

(2) The date of hire or change in job function;

(3) The person's name and assigned functions;

(4) The name of the supervisor of the function; and

(5) The date the person is to receive and complete hazmat training in accordance with proposed Appendix N of part 121.

F. Part 121, Appendix N—Hazmat Training Curriculum

The training curriculum in Appendix N would replace the recommended curriculum in AC 121–21B. The training curriculum would be modeled on the curriculum adopted in ICAO Document 9284/AN–905, ''Technical Instructions for the Safe Transport of Dangerous Goods By Air'' (ICAO Technical Instructions). However, the two curricula would not be identical. For instance, the types of training provided to certain categories of workers would be expanded from that required by the ICAO Technical Instructions, especially for will-not-carry certificate holders. Additionally, categories of workers would be function-based; thus, a flight crewmember may need to have training in acceptance of cargo if he or she performed any task relevant to that function. Finally, the ICAO Technical Instructions require recurrent training only every 2 years, instead of every year, as the FAA proposes. The ICAO 2-year requirement is reflected in most foreign regulations, such as those promulgated in the Joint Aviation Requirements and proposed by the European Union.

Appendix N of part 121 would use a matrix that identifies 13 separate training modules, six categories of workers, and the training modules required for each category of worker. Appendix N of part 121 would provide clear standards for hazmat training programs applicable to both will-carry and will-not-carry certificate holders.

The training curriculum would vary depending upon the function to be performed or supervised. Standards for will-not-carry training would require that both part 121 and part 135 will-not-carry certificate holders conduct recognition training to enable persons performing or supervising a TRF to identify undeclared, as well as declared, hazmat. The training curriculum for will-carry operators would cover the three phases of training specified by the HMRs: General awareness, function-specific, and safety training.

To receive FAA approval, a training program would have to provide ample time to ensure that all areas were thoroughly covered. Additionally, the FAA proposes that any approved training program would have to provide an interactive session with an instructor who could address any questions or problem areas.

The FAA is proposing that each person would have to be tested by a written or performance-based test. The certificate holder would have to document to the FAA that the test covered, and the person comprehended, each subject area required by Appendix N. To ensure comprehension, the FAA would expect an instructor to review parts of the test that the test taker could not answer, or answered incorrectly and re-instruct the trainee. The FAA encourages the use of performance-based or other types of tests that are characterized by practical application of the subject matter to the TRFs performed by the certificate holder. Comprehension includes both understanding the subject matter and how it relates to the functions performed by the individual.

Based on a ''Special Emphasis Review'' conducted by the Principal Operations Inspectors, the FAA believes that most part 121 and 135 certificate holders have already implemented a hazmat training program similar to the ICAO training curriculum. Because the ICAO Technical Instructions are the basis for proposed curriculum, the FAA believes that this proposal would largely incorporate existing practice.

It should be noted that foreign carriers entering the United States under 14 CFR part 129 would not be affected by the proposed amendment.

G. Part 135, Subpart K—Single-Pilot Operation

Current part 135 contains exceptions for certificate holders who use only one pilot in their operations. Specifically, these certificate holders are excepted from the manual requirements in § 135.21. These certificate holders, however, would remain subject to the hazmat training requirements in § 135.333.

Under the proposed rules, all part 135 certificate holders, including single-pilot certificate holders, would have to meet the hazmat training requirements of proposed part 135, subpart K, although they would not have to have a ''training program'' as such. Additionally, those persons loading aircraft for these certificate holders also would have to receive hazmat training that would meet the requirements of proposed Appendix N of part 121 and be informed of the certificate holder's restrictions and limitations regarding the carriage of hazardous materials.

Although certificate holders with only one pilot do not have an approved training program, these certificate holders would have to be able to demonstrate compliance with this proposed hazmat training rule and would have to continue to maintain records of training. In addition, certificate holders conducting operations that transport hazmat with one pilot would remain subject to DOT's hazardous materials training and

recordkeeping requirements in 49 CFR 172.700 through 172.704.

H. Part 145—Repair Stations

The FAA continues to be concerned about hazmat training provided to persons performing work at repair stations used by a certificate holder. The FAA, therefore, proposes to require that repair stations that are hazmat employers under 49 CFR 171.8, and use aircraft components, consumable materials, or other items regulated under 49 CFR parts 171 through 180, establish a hazmat training program and provide evidence of compliance with that program when applying for certification or rating. The proposed rule would allow the FAA to ensure compliance with DOT's HMRs. Historically, this compliance has been sought through civil penalty enforcement actions following the discovery of violations of the HMRs, but the FAA believes that additional requirements should be in place to ensure that repair stations are complying with DOT's HMRs. If they are not complied with, the FAA would have the option of taking certificate action against the repair station.

Many required items on aircraft contain, or are themselves, regulated hazmat. Examples include oxygen generators used to provide oxygen to passengers in the event of an emergency and fuel control units for jet engines. Since the crash of Valujet Flight 592, the FAA repeatedly has investigated incidents where oxygen generators and fuel control units have been improperly offered and accepted for air transportation. The FAA believes that these proposed FAA rules would increase compliance with the hazmat training requirements of 49 CFR 172.700 through 172.704, and the rules regulating hazmat in commerce.

Additionally, the FAA is proposing to require that repair station management notify all workers of the will-not-carry or will-carry status of the certificate holders for which it works. This would have to be done upon being notified by the certificate holder in accordance with § 121.803(d) or § 135.503(d). This would mirror certificate holder requirements contained in parts 121 and 135 and would provide the necessary follow-through from repair station management to worker.

Foreign repair stations must seek certification under part 145 to perform maintenance on United States-registered aircraft operated under part 121. Those part 145 foreign repair stations would be bound by the proposed rule. It would not apply to foreign repair stations that do not seek part 145 certification.

1. Section 145.5—Hazardous Materials Training

Paragraph (a): The FAA is proposing to add § 145.5(a) to cross-reference the hazardous materials training requirement in 49 CFR. The FAA is not proposing that the repair stations do anything that they are not already doing under DOT's HMRs. Based on the FAA's experience, however, many repair stations that use consumable hazardous materials or other hazmat, or replace aircraft components, do not realize that many of these items are regulated by 49 CFR parts 171 through 180. By including this cross-reference in part 145, the FAA would be notifying all repair stations that they should carefully review the items with which they work to determine whether any are regulated by 49 CFR parts 171 through 180. If so, the repair station would have to establish and implement a hazardous materials training program, if one were not already in place.

Paragraph (b): Proposed § 145.5(b) would prohibit repair station workers from performing or supervising a TRF for part 121 or part 135 certificate holders, unless those persons had received annual training in accordance with the part 121 or part 135 certificate holder's approved hazardous materials training program.

2. Section 145.11—Application and Issue

Proposed § 145.11(a)(5) would require part 145 certificate holders that are hazmat employers under 49 CFR 171.8 to certify to the FAA that, at the time of application, they train all hazmat employees, as defined in 49 CFR 171.8, as required by the HMRs. This certification would have to be submitted along with the repair station's application for a part 145 certificate or rating. Requiring the repair station to provide this certificate would impose minimal additional documentation as part of the application for certification or rating process, but would ensure that the applicant is aware of its responsibility under the HMRs.

3. Section 145.27—Notification of Hazardous Materials Authorizations

Proposed § 145.27 would require each repair station to notify each of its workers of the will-carry or will-not-carry status of the certificate holders for which the repair station does work.

III. Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Description of respondents: Part 121, part 135, and part 145 certificate holders.

Need: This NPRM would require a part 121 or a part 135 certificate holder to update its training manuals, restructure its recordkeeping data bases, update its employee training records, and notify its repair stations of its status as a will-carry or a will-not-carry operator.

The NPRM would also require a part 145 certificate holder to notify its employees of the will-carry or will-not-carry status of each of the part 121 or part 135 certificate holders it works for, and to certify to the FAA that it is in compliance with the regulations.

Estimated burden: The NPRM would require a total of 3,673,948 hours at a cost of $75,756,500.

The agency is soliciting comments to: (1) Evaluate whether the proposed collection of information would be necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information proposed to be collected; and (4) minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submission of responses).

Individuals and organizations may see the ''Supporting Statement for the Paperwork Reduction Act Submission'' on the Internet at *http://dms.dot.gov,* or by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW., Washington, DC 20591 (202–267–9680). Be sure to identify the docket number of this rulemaking. Individuals and organizations may submit comments on the information collection requirement by the comment closing date shown under ''Dates.'' Comments should be directed to the address under **ADDRESSES** above.

According to the regulations implementing the Paperwork Reduction Act of 1995 (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after

it has been approved by the Office of Management and Budget.

IV. International Compatibility

The FAA has reviewed the International Civil Aviation Organization (ICAO) Annex 18, International Standards and Recommended Practices for the Safe Transport of Dangerous Goods by Air; the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air; the (proposed) European Union regulations OPS 1.1135, Approval to Transport Dangerous Goods; and the Joint Aviation Requirements—Operations, and other regulations, where they exist. The agency has evaluated similarities and differences in these proposed amendments and foreign regulations. Differences would affect U.S. aircraft operators only, and, therefore, it would not be necessary for the FAA to file any differences with ICAO. Foreign carriers operating in the United States would not be affected by the proposed rule.

V. Economic Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531 through 2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards. Where appropriate, agencies are directed to use those international standards as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules. This requirement applies only to rules that include a Federal mandate on State, local or tribal governments or the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation).

In conducting these analyses, FAA has determined this proposed rule: (1) Would have benefits which would justify its costs, would be a ''significant regulatory action'' as defined in the Executive Order and would be ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) would not have a significant economic impact on a substantial number of small entities; (3) would impose no barriers to international trade; and (4) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. The FAA has placed these analyses in the docket and summarized them below.

Benefits

The proposed rule is intended to reduce the improper carriage of hazardous materials aboard part 121 and 135 aircraft by updating and clarifying the current hazardous material requirements for these operators and by amending the certification procedures and requirements for part 145 repair stations that use or handle hazardous materials.

A review of the National Transportation Safety Board database indicates that there have been six hazardous materials related accidents in the 10-year period 1989 through 1998. The FAA sanctioned 64 violations of the hazardous materials regulations and imposed fines amounting to $1.3 million for these violations during 2000. The potential for further accidents is significant given the number of serious incidents being investigated by the FAA. A review of active cases in 1999 indicated that at least 59 were for serious hazardous materials violations against certificate holders. Given that there have been six accidents in the past in which hazardous materials were involved, the FAA estimates that there almost certainly will be a hazardous materials related accident in the next decade based on the past accident history. Furthermore, given that one of the six accidents involved fatalities, the FAA believes there is a chance that there will be one or more fatal accidents attributable to hazardous materials violations if the current regulations are not improved. The FAA estimates that a single fatal accident would result in 79 lives lost and a monetary loss of $232 million.

Costs

The FAA has analyzed the expected costs of this proposal for a 10-year period, 2002 through 2011. All costs in this analysis are expressed in 1999 dollars. The estimated industry costs over 10 years total $107.5 million, or $75.8 million discounted. These costs consist of the initial cost of revising manuals and upgrading databases, annual recordkeeping, and annual notifications. In addition, some carriers would incur the cost for initially training personnel in the more comprehensive hazardous materials recognition programs and for recurrent training. The cost of revising manuals is estimated at $321,000, ($300,000 discounted); database upgrades at $617,000 ($577,000 discounted); recordkeeping at $13,526,000 ($9,294,000 discounted); and notifications at $549,500 ($449,800 discounted). The training of aircraft operator and repair station persons is estimated at $91.6 million ($64.5 million discounted). Repair station record submission and staff notification costs are estimated at $878,000 ($612,000 discounted).

Public comment is invited. The FAA requests that all comments be accompanied by clear economic documentation.

Cost-Benefit Analysis

The National Transportation Safety Board's accident database shows one fatal accident in the past 10 years. Applying the Poisson probability distribution to that one fatal accident suggests that, under the proposed rule, there would be more than a 60 percent chance that one or more fatal accidents would be avoided. (See the discussion of ''Benefits'' in the complete Regulatory Impact Analysis, which is contained in the public docket.) The monetary benefit of avoiding a single accident resulting in fatalities is estimated at $232 million. The cost of implementing this proposed rule is estimated at $107.5 million over the next 10 years.

The cost of a final rule (''Hazardous Materials: Chemical Oxidizers and Compressed Oxygen Aboard Aircraft'' (64 FR 45388; Aug. 19, 1999)) published by the Research and Special Programs Administration, using the same accident database, was estimated at $865,000, thus raising total costs to industry to $108.3 million. Since the potential benefits exceed the additional costs of this proposed rule and the RSPA final rule, the proposed rule would be cost beneficial.

The FAA invites public comments and requests that all comments be accompanied with clear and detailed supporting economic documentation.

VI. Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organization, and government jurisdictions subject to regulation.'' To achieve that principle, the RFA requires

agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Small Business Administration (SBA) suggests that ''small'' entities can be identified either on the basis of employees or revenues. For this proposed rule, small entities are composed of two distinct groups: Aircraft operators and repair stations. The SBA suggests that aircraft operators with 1,500 or fewer employees are ''small'' entities. The aircraft operators consist of small part 121 operators and small part 135 operators. To determine the impact of the proposed rule on the 110 small part 121 operators and the 1,780 small part 135 operators, the FAA has estimated the annualized cost impact on these two categories of small entities separately, since the proposed rule's impacts differ.

The proposed rule could impose an estimated cost of $4.5 million on the 110 small part 121 operators over the next 10 years. The average annualized cost per small operator is estimated at $4,100. However, the FAA estimates that two will-carry operators would incur all six cost elements (manual revisions, database upgrades, recordkeeping, notifications, deficiency training, repair station training) and the annualized cost to each of these entities is estimated at $82,400. The costs to will-not-carry operators would be lower since less training would be required. According to an SBA analysis of Bureau of Census data for scheduled air transportation firms, firms with fewer than 500 employees have average revenues of $10.75 million. The estimated cost to each of these small entities is approximately eight-tenths of one percent of the average revenue of $107,531 of these firms. Thus none of the 110 small part 121 entities would incur a substantial economic impact in the form of higher annual costs as the result of the proposed rule.

The proposed rule could impose an estimated cost of $32.6 million on the 1,780 small part 135 operators over the next 10 years. While the average annualized cost per small operator is estimated at $1,800, some 49 will-carry entities would each incur annualized costs of $7,600. These operators would incur higher training costs than will-not-carry operators. According to a Small Business Administration analysis of Bureau of Census data for non-scheduled air transportation firms, firms with fewer than 500 employees have average revenues of $1.87 million. The estimated cost to each of these small entities is approximately four-tenths of one percent of the average revenue ($18,700) of non-scheduled air transportation firms with fewer than 500 employees, based on the SBA analysis of Bureau of Census data, and thus none of the small part 135 entities would incur a substantial economic impact in the form of higher annual costs as the result of the proposed rule. Therefore, the FAA has determined that this proposed rule would not have a significant impact on a substantial number of small part 121 or part 135 operators.

The SBA suggests that ''small'' repair stations can be identified as those firms with annual revenues of $5 million or less. Research conducted for the FAA indicates that approximately 56 percent of all domestic repair stations meet this criterion. The proposed rule is expected to impose an estimated cost of $878,000 on the 1,935 small independent domestic part 145 repair stations. The average annualized cost to the 56 small repair stations that incur both cost elements (record submission and staff notification) is estimated at $125. The FAA considers this amount economically insignificant. Therefore, the FAA has determined that this proposed rule would not have a significant impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605 (b), the Federal Aviation Administration certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

VII. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that it would impose costs on domestic entities that international entities operating into and out of the United States would not incur. However, the anticipated safety benefits warrant these costs and, therefore, these costs are not considered unnecessary obstacles to the foreign commerce of the United States.

VIII. Unfunded Mandates Reform Act Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

IX. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, or the relationship between the national government of the United States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA determined that this notice of proposed rulemaking would not have Federalism implications.

X. Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this

proposed rulemaking action qualifies for a categorical exclusion.

XI. Energy Impact

The energy impact of this notice of proposed rulemaking has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. The FAA has determined that the proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 135

Aircraft, Airmen, Aviation Safety, Reporting and recordkeeping requirements.

14 CFR Part 145

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 119, 121, 135, and 145 of title 14, Code of Federal Regulations, as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

1. The authority citation for Part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

2. Amend part 119 by adding Special Federal Aviation Regulation No. 99 as follows:

Special Federal Aviation Regulation No. 99—Hazardous Materials Regulations Governing Manual And Training Requirements

1. *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to all U.S. air carriers and commercial operators that are issued a certificate under part 119 of this chapter on or before [*effective date of the final rule*] to operate under part 121 or part 135 of this chapter. Notwithstanding parts 121 and 135 of this chapter, these air carriers and commercial operators may comply with either the provisions of this SFAR until its expiration, or part 121, subpart Y, or part 135, subpart K.

2. *Definition.* The term certificate holder, as used in this SFAR, means a person certificated in accordance with part 119, subpart C, of this chapter and operating under part 121 or part 135 of this chapter.

3. *Manual Contents.* (a) Each manual required by § 121.133 shall contain procedures and information to assist personnel to identify packages marked or labeled as containing hazardous materials and, if these materials are to be carried, stored, or handled, procedures and instructions relating to the carriage, storage, or handling of hazardous materials, including the following:

(1) Procedures for determining whether the material is accompanied by the proper shipper certification required by 49 CFR Chapter I, Subchapter C; whether it is properly packed, marked, and labeled; whether it is accompanied by the proper shipping documents; and whether requirements for compatibility of materials have been met.

(2) Instructions on the loading, storage, and handling.

(3) Notification procedures for reporting hazardous material incidents as required by 49 CFR Chapter I, Subchapter C.

(4) Instructions and procedures for the notification of the pilot in command when there are hazardous materials aboard, as required by 49 CFR Chapter I, Subchapter C.

(b) Each manual required by § 135.21 of this chapter shall contain procedures and instructions to enable personnel to recognize hazardous materials, as defined in 49 CFR, and if these materials are to be carried, stored, or handled, procedures and instructions for:

(1) Accepting shipment of hazardous material regulated by 49 CFR to assure proper packaging, marking, labeling, shipping documents, compatibility of articles, and instructions their loading, storage, and handling;

(2) Notification and reporting hazardous material incidents as required by 49 CFR; and

(3) Notification of the pilot in command when there are hazardous materials aboard, as required by 49 CFR.

4. *Training Program.* (a) Each certificate holder required to have a training program under § 121.401 of this chapter shall establish, obtain the appropriate initial and final approval of, and provide, a training program that meets the requirements of part 121, subpart N, and appendices E and F of part 121 of this chapter. Each certificate holder required to have a training program under § 121.401 of this chapter shall ensure that each crewmember, aircraft dispatcher, flight instructor, and check airman, and each person assigned duties for the carriage and handling of hazardous materials, is adequately trained to perform his or her assigned duties.

(b) Each certificate holder required to have a training program under § 135.341 of this chapter shall establish, obtain the appropriate initial and final approval of, and provide a training program that meets the requirements of this SFAR. Each certificate holder required to have a training program under § 135.341 of this chapter shall ensure that each crewmember, flight instructor, check airman, and each person assigned duties for the carriage and handling of hazardous materials (as defined in 49 CFR 171.8) is adequately trained to perform their assigned duties.

5. *Training requirements: Handling and carriage of hazardous materials under part 121.* (a) No certificate holder conducting operations under part 121 of this chapter may use any person to perform and no person may perform, any assigned duties and responsibilities for the handling or carriage of hazardous materials governed by 49 CFR, unless within the past year that person has satisfactorily completed training in a program established and approved under this SFAR, which includes instructions regarding the proper packaging, marking, labeling, and documentation of hazardous materials, as required by 49 CFR, and instructions regarding their compatibility, loading, storage, and handling characteristics. A person who satisfactorily completes training in the calendar month before, or the calendar month after, the month in which it becomes due, is considered to have taken that training during the month it became due.

(b) Each certificate holder conducting operations under part 121 of this chapter shall maintain a record of the satisfactory completion of the initial and recurrent training given to crewmembers and ground personnel who perform assigned duties and responsibilities for the handling and carriage of hazardous materials.

(c) When a certificate holder conducting operations under part 121 of this chapter operates in a foreign country where the loading and unloading of aircraft must be performed by personnel of the foreign country, that certificate holder may use personnel not

meeting the training requirements of paragraphs (a) and (b) of this provision if they are supervised by a person qualified under paragraphs (a) and (b) of this provision to supervise the loading, offloading and handling of hazardous materials.

6. *Training requirements: Handling and carriage of hazardous materials under part 135.* (a) Except as provided in paragraph (d) of this provision, no certificate holder conducting operations under part 135 may use any person to perform, and no person may perform, any assigned duties and responsibilities for the handling or carriage of hazardous materials (as defined in 49 CFR 171.8), unless within the past year that person has satisfactorily completed initial or recurrent training in an appropriate training program established by the certificate holder, which includes instruction on—

(1) The proper shipper certification, packaging, marking, labeling, and documentation for hazardous materials; and

(2) The compatibility, loading, storage, and handling characteristics of hazardous materials.

(b) Each certificate holder conducting operations under part 135 of this chapter, shall maintain a record of the satisfactory completion of the initial and recurrent training given to crewmembers and ground personnel who perform assigned duties and responsibilities for the handling and carriage of hazardous materials.

(c) Each certificate holder, conducting operations under part 135 of this chapter, that elects not to accept hazardous materials shall ensure that each crewmember is adequately trained to recognize those items classified as hazardous materials.

(d) If a certificate holder conducting operations under part 135 of this chapter operates into or out of airports at which trained employees or contract personnel are not available, it may use persons not meeting the requirements of paragraph (a) or (b) of this provision to load, offload, or otherwise handle hazardous materials if these persons are supervised by a crewmember who is qualified under paragraphs (a) and (b) of this provision.

7. *Expiration.* This Special Federal Aviation Regulation expires on [*date 15 months after the effective date of the final rule*].

3. Amend § 119.49 by redesignating paragraph (a)(13) as (a)(14) and adding a new paragraph (a)(13) to read as follows:

§ 119.49 Contents of operations specifications.

(a) * * *

(13) An authorization permitting, or a prohibition against, accepting, handling, and transporting of materials regulated as hazardous materials in transport under 49 CFR parts 171 through 180.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC FLAG, AND SUPPLEMENTAL OPERATIONS

4. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

5. Amend § 121.135 by revising paragraph (b)(23) to read as follows:

§ 121.135 Contents.

* * * * *

(b) * * *

(23)

(i) Provide procedures and information, as described in paragraph (b)(23)(ii) of this section, to assist each person performing or supervising the following functions involving items for transport on an aircraft:

(A) Acceptance;
(B) Rejection;
(C) Handling;
(D) Storage incidental to transport;
(E) Packaging of company material;
(F) Loading;
(G) Unloading; or
(H) Carriage.

(ii) Ensure that the procedures and information described in this paragraph are sufficient to assist the person in identifying packages that are marked or labeled as containing hazardous materials or that show signs of containing undeclared hazardous materials. The procedures and information must include:

(A) Procedures for rejecting packages that do not conform to the Hazardous Materials Regulations in 49 CFR parts 171 through 180 or that appear to contain undeclared hazardous materials;

(B) Procedures for complying with the hazardous materials incident reporting requirements of 49 CFR 171.15 and 171.16;

(C) The certificate holder's hazmat policies and whether the certificate holder is authorized to carry, or is prohibited from carrying, hazardous materials; and

(D) If the certificate holder's operations specifications permit the carriage of hazardous materials, procedures and information to ensure the following:

(*1*) That packages containing hazardous materials are properly offered and accepted in compliance with 49 CFR parts 171 through 180;

(*2*) That packages containing hazardous materials are properly handled, stored, packaged, loaded, unloaded and carried on board an aircraft in compliance with 49 CFR parts 171 through 180;

(*3*) That the requirements for discrepancy reporting (49 CFR 175.31) and Notice to the Pilot in Command (49 CFR 175.33) are complied with; and

(*4*) That aircraft replacement parts, consumable materials or other items regulated by 49 CFR parts 171 through 180 are properly handled, packaged, and carried.

6. Amend § 121.401 by revising paragraph (a)(1) to read as follows:

§ 121.401 Training program: General.

(a) * * *

(1) Establish and implement a training program that satisfies the requirements of this subpart and appendices E and F of this part and that ensures that each crewmember, aircraft dispatcher, flight instructor and check airman is adequately trained to perform his or her assigned duties. Prior to implementation, the certificate holder must obtain initial and final FAA approval of the training program.

* * * * *

§ 121.433a [Removed]

7. Remove § 121.433a.

8. Add subpart Y, consisting of §§ 121.801 through 121.804, to read as follows:

Subpart Y—Hazardous Materials Training Program

§ 121.801 Applicability and definitions.

(a) This subpart prescribes the requirements applicable to each certificate holder for training each person performing or supervising any of the following functions involving any item for transport on board an aircraft:

(1) Acceptance;
(2) Rejection;
(3) Handling;
(4) Storage incidental to transport;
(5) Packaging of company material;
(6) Loading;
(7) Unloading; or
(8) Carriage.

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

(1) *Company material (COMAT)*—Material owned or used by a certificate holder.

(2) *Initial hazardous materials training*—The basic training required for each newly hired person, or each person

changing job functions, who performs or supervises any of the functions specified in paragraph (a) of this section.

(3) *Recurrent hazardous materials training*—The yearly training required for each person who has satisfactorily completed the certificate holder's approved initial hazardous materials training program and performs or supervises any of the functions specified in paragraph (a) of this section.

§ 121.802 Hazardous materials training: General.

(a) Each certificate holder must establish and implement a hazardous materials training program that:

(1) Satisfies the requirements of Appendix N of this part;

(2) Ensures that each person performing or supervising any of the functions specified in § 121.801(a) is trained in accordance with 49 CFR 172.700 and the requirements of this subpart; and

(3) Enables the trained person to recognize items that contain, or may contain, hazardous materials regulated by 49 CFR parts 171 through 180.

(b) Each certificate holder must provide initial hazardous materials training and recurrent hazardous materials training to each person performing or supervising any of the functions specified in § 121.801(a).

(c) Each certificate holder's hazardous materials training program must be approved by the FAA prior to implementation.

§ 121.803 Hazardous materials training required.

(a) *Training requirement.* Except as provided in paragraphs (b), (c) and (f) of this section, no certificate holder may use any person to perform any of the functions or supervisory responsibilities, and no person may perform any of the functions or supervisory responsibilities, specified in § 121.801(a) unless that person has satisfactorily completed the certificate holder's FAA-approved initial or recurrent hazardous materials training program within the past year.

(b) *New hire or new job function.* A person who is a new hire and has not yet satisfactorily completed the required initial hazardous materials training, or a person who is changing job functions and has not received initial or recurrent training for a function involving storage incidental to transport, loading, or unloading of items for transport on an aircraft, may perform those functions for not more than 30 days from the date of hire or a change in job function, if:

(1) The person is under the direct visual supervision of a person who is authorized by the certificate holder and who has successfully completed the certificate holder's FAA-approved initial or recurrent training program within the past year;

(2) The supervisor-to-worker ratio is approved by the principal security inspector or the principal operations inspector.

(c) *Persons who work for more than one certificate holder.* A certificate holder that uses or assigns a person to perform or supervise a function specified in § 121.801(a), when that person also performs or supervises the same function for another certificate holder, need only train that person in its own policies and procedures regarding those functions, if all of the following are met:

(1) The certificate holder using this exception receives written verification from an authorized, knowledgeable person representing the other certificate holder that the person has satisfactorily completed hazardous materials training for the specific function under the other certificate holder's approved training program under Appendix N of this part; and

(2) The certificate holder who trained the person has the same operations specifications regarding the acceptance, handling, and carriage of hazardous materials as the certificate holder using this exception.

(d) *Recurrent hazardous materials training—Completion date.* A person who satisfactorily completes recurrent hazardous materials training in the calendar month before, or the calendar month after, the month in which the recurrent training is due, is considered to have taken that training during the month in which it is due. If the person completes this training earlier than the month before it is due, the month of the completion date becomes his or her new anniversary month.

(e) *Repair stations.* A certificate holder must ensure that each repair station performing work on the certificate holder's behalf is notified in writing, and is aware of, the certificate holder's policies and operations specifications regarding the acceptance, rejection, handling, storage incidental to transport, and carriage of hazardous materials, including company material. This notification requirement applies only to repair stations that handle, use, or replace material regulated by 49 CFR parts 171 through 180, including consumable hazardous materials and aircraft parts containing hazardous materials.

(f) *Certificate holders operating at foreign locations.* This exception applies if a certificate holder operating at a foreign location where the country requires the certificate holder to use persons working in that country to load and unload aircraft. In such a case, the certificate holder may use those persons even if they have not been trained in accordance with the certificate holder's approved hazardous materials training program. Those persons, however, must be under the direct visual supervision of someone who has successfully completed the certificate holder's approved initial or recurrent hazardous materials training program in accordance with this part. This exception applies only to those persons who load or unload aircraft.

§ 121.804 Hazardous materials training records.

(a) *General requirement.* Each certificate holder must maintain a record of all training required by this part received within the preceding three years for each person who performs or supervises a function specified in § 121.801(a). The record must be maintained during the time that the person performs or supervises any of those functions, and for 90 days thereafter. These training records must be kept for direct employees of the certificate holder, as well as independent contractors, subcontractors, and any other person who performs or supervises these functions for the certificate holder.

(b) *Location of records.* The certificate holder must retain the training records required by paragraph (a) of this section at the location where the trained person performs or supervises the function specified in § 121.801(a). When the person ceases to perform the function, the certificate holder must retain these records at the last location where the person performed the function for an additional 90 days.

(c) *Content of records.* Each record must contain the following:

(1) The person's name and function performed or supervised;

(2) The dates of each training course successfully completed within the preceding three years;

(3) A statement signed and dated by a person designated by the Director of Training certifying that the person has completed training in accordance with the certificate holder's approved hazardous materials training program; and

(4) A description of each training course successfully completed by the person that includes for each course:

(i) Date of the course;

(ii) Subject matter of the course and training area covered;

(iii) Number of hours of the course;

(iv) Instructor's name and signature indicating the person's successful completion of the course, and person's name and signature indicating the person's attendance; and

(v) Name and business address of the organization or professional instructor providing the training.

(d) *New person or new job function.* Each certificate holder using a person under the exception in § 121.803(b)(1) must maintain a record for that person at the location where the person performs the function. The record must include the following:

(1) A signed statement from an authorized representative of the certificate holder authorizing the use of the person in accordance with the exception;

(2) The date of hire or change in job function;

(3) The person's name and assigned function;

(4) The name of the supervisor of the function; and

(5) The date the person is to complete hazardous materials training in accordance with Appendix N of this part.

9. Add Appendix N to read as follows:

Appendix N—Hazardous Materials Training Curriculum for Certificate Holders

This appendix prescribes the requirements for hazardous materials training under part 121, subpart Y, and part 135, subpart K of this chapter. The training requirements for various categories of persons are defined by function or responsibility. An ''X'' in a box under a category of persons indicates that the specified category must receive the noted training. All training requirements apply to supervisors as well as to persons actually performing the function. Training requirements for certificate holders authorized in their operations specifications to transport hazardous materials (will-carry) are prescribed in Table 1. Those certificate holders with a prohibition in their operations specifications against carrying or handling hazardous materials (will-not-carry) must follow the curriculum prescribed in Table 2. All persons must be tested through a written or performance-based test that verifies comprehension of each subject area required by this appendix.

TABLE 1.—HAZARDOUS MATERIALS TRAINING CURRICULUM FOR CERTIFICATE HOLDERS THAT TRANSPORT HAZARDOUS MATERIALS

Module	Area of training	Category of personnel (see key below)					
		1	2	3	4	5	6
1	General Overview	X	X	X	X	X	X
2	Hidden Dangerous Goods	X	X	X	X	X	X
3	Company Materials (COMAT)	X	X	X	X	X	.....
4	Documentation	X	X	X	X	X	.....
5	Acceptance & Handling	X	X	X	X	X	.....
6	Marking & Labeling	X	X	X	X	X	X
7	Classification	X	X	X	.....	X	.....
8	Identification	X	X	X	.....	X	.....
9	Packaging	X	X	.....	.....	X	.....
10	Notice to Pilot-In-Command	X	X	.....	X	X	X
11	Safety & Reporting	X	X	X	X	X	X
12	Passenger/Air Carrier Exceptions/U.S. Mail	X	X	X	X	X	.....
13	Certificate holder policies and procedures	X	X	X	X	X	X

KEY:
1—Persons who accept cargo, packages or passenger baggage.
2—Persons working in supply, storage, or warehouse facilities, or involved in shipping of aircraft parts, supplies or company material.
3—Persons who handle, store, and load or unload packages, passenger baggage or cargo.
4—Persons engaged in passenger and baggage check-in services (*e.g.*, skycaps, ticket counter agents, flight attendants, etc.).
5—Persons responsible for cargo during flight (including pilots, flight engineer, flight attendants, dispatchers).
6—Flight crewmembers who do not perform any responsibility listed above.

TABLE 2.—HAZARDOUS MATERIALS TRAINING CURRICULUM FOR CERTIFICATE HOLDERS THAT DO NOT TRANSPORT HAZARDOUS MATERIALS

Module	Area of training	Category of personnel (see key below)					
		1	2	3	4	5	6
1	General Overview	X	X	X	X	X	X
2	Hidden Dangerous Goods	X	X	X	X	X	X
3	Company Materials (COMAT)	X	X	X	X	X	.....
4	Documentation	X	X	X	X	X	.....
5	Acceptance & Handling	.....	X	.....	.....	.....	.....
6	Marking & Labeling	X	X	X	X	.....	X
7	Classification	.....	X	.....	.....	.....	.....
8	Identification	X	X	X	.....		
9	Packaging	.....	X	.....	.....	.....	.....
10	Notice to Pilot-In-Command	.....	X	.....	.....	.....	X
11	Safety & Reporting	X	X	X	X	X	X
12	Passenger/Air Carrier Exceptions/U.S. Mail	X	X	X	X	X	.....
13	Certificate holder policies and procedures	X	X	X	X	X	X

Key:
1—Persons who accept cargo, packages or passenger baggage.
2—Persons working in supply, storage, or warehouse facilities, or involved in shipping of aircraft parts, supplies or company material.

3—Persons who handle, store, and load or unload packages, passenger baggage or cargo.
4—Persons engaged in passenger and baggage check-in services (*e.g.*, skycaps, ticket counter agents, flight attendants, etc.).
5—Persons responsible for cargo during flight (including pilots, flight engineers, flight attendants, dispatchers).
6—Flight crewmembers who do not perform any responsibility listed above.

Module 1—General Overview

- Applicable regulatory materials
- Overview of 49 CFR parts 171 through 180
- Use of ICAO Technical Instructions
- Use of IATA Dangerous Goods Manual
- Definitions used in air transportation of hazardous materials
- General transportation requirements—49 CFR 171.2
- Carriage by aircraft—49 CFR part 175
- Training and recordkeeping requirements
- Use of and familiarity with a ''trigger list'' and a ''passenger check-in list'' to assist authorized persons in the detection of undeclared hazardous materials carried in passenger baggage or other types of cargo

Module 2—Hidden Dangerous Goods

- Hidden shipment indicators (includes review and use of Hidden Shipment List and/or trigger lists)
- Suspicious cargo and baggage awareness (review and training in the use of a ''passenger check-in list'' to assist those authorized persons in detection of hazardous materials carried by passengers in baggage or cargo)

Module 3—Company Materials (COMAT)

- Identifying and recognizing hazardous company-materials (COMAT), including:
  —Hazardous materials on aircraft
  —Replacement components
  —Consumable materials
- Specific hazardous materials
- COMAT exceptions
- Facility storage and safe movement and handling requirements for hazardous materials COMAT—
  —Specific hazards of, and precautionary measures and proper disposal procedures, including:
  Environmental precautions
  Transportation precautions

Module 4—Documentation (49 CFR part 172, subpart C, and 49 CFR part 175, subpart A)

- Shipper's certification requirements for hazardous materials
- Shipping paper requirements
- Description of hazardous materials required on shipping papers
- Shipping papers for hazardous materials aboard aircraft, 49 CFR part 175, subpart A

Module 5—Acceptance, Handling, Loading

- Passenger and cargo information signage requirements
- Acceptance procedures and requirements for hazardous materials
- Inspection of packages and unit load devices
- Quantity limitations on aircraft
- Quantity limitations for inaccessible cargo
- Stowage compatibility
- Orientation of packages
- Securing packages
- Location of packages
- Damaged shipments of hazardous materials

Module 6—Marking and Labeling

- Markings required on packages containing hazardous materials
- Labels required on packages containing hazardous materials
- Keeping and replacing hazardous materials labels

Module 7—Classification

- Hazardous materials classification
- Unacceptable hazardous materials

Module 8—Identification

- Purpose and use of the hazardous materials tables
- Proper shipping names
- Hazard class (definitions)
- UN/ID numbers
- Packing group

Module 9—Packaging

- Shippers' responsibilities
- General packaging requirements
- Packing instructions and assignments
- Small quantity exceptions
- Limited quantity exceptions

Module 10—Notification to Pilot in Command

- Requirements for notification to pilot in command
- Emergency response information

Module 11—Safety and Reporting

- Emergency response information
- Hazardous materials discrepancy/incident reporting

Module 12—Dangerous Goods Exceptions

- Exceptions
- U.S. Mail and U.S. Postal Service standards

Module 13—Certificate Holder Policy and Procedures

- Policies and procedures regarding acceptance, rejection, handling, storage incidental to transport, packaging of company material, loading, unloading and carriage of items for transport on board aircraft
- Policies and procedures regarding handling, packaging, and transport of hazardous materials moving by means other than air

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

10. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

11. Amend § 135.23 by revising paragraph (p) to read as follows:

§ 135.23 Manual contents.

* * * * *

(p)(1) Procedures and information, as described in paragraph (p)(2) of this section, for each person performing or supervising the following functions involving items for transport on board an aircraft:

(i) Acceptance;
(ii) Rejection;
(iii) Handling;
(iv) Storage incidental to transport;
(v) Packaging of company material;
(vi) Loading;
(vii) Unloading; or
(viii) Carriage.

(2) Procedures and information, as described in this paragraph, sufficient to assist a person in identifying packages that are marked or labeled as containing hazardous materials or that exhibit indications of containing undeclared hazardous materials. The procedures and information must include:

(i) Procedures for rejecting packages that do not conform to the Hazardous Materials Regulations in 49 CFR parts 171 through 180 or that appear to contain undeclared hazardous materials;

(ii) Procedures for complying with the hazardous materials incident reporting requirements of 49 CFR 171.15 and 171.16;

(iii) The certificate holder's hazmat policies and whether the certificate holder is authorized to carry, or is prohibited from carrying, hazardous materials; and

(iv) If the certificate holder's operations specifications permit the carriage of hazardous materials, procedures and information to ensure the following:

(*A*) That packages containing hazardous materials are properly offered and accepted in compliance with 49 CFR parts 171 through 180;

(*B*) That packages containing hazardous materials are properly handled, stored, packaged, loaded, unloaded and carried on board an aircraft in compliance with 49 CFR parts 171 through 180;

(*C*) That the requirements for discrepancy reporting (49 CFR 175.31) and Notice to the Pilot in Command (49 CFR 175.33) are complied with; and

(*D*) That aircraft replacement parts, consumable materials or other items regulated by 49 CFR parts 171 through 180 are properly handled, packaged, and carried.

* * * * *

12. Amend § 135.323 by revising paragraph (a)(1) as follows:

§ 135.323 Training program: General.

(a) * * *

(1) Establish and implement a training program that satisfies the requirements of this subpart and that ensures that each crewmember, aircraft dispatcher, flight instructor and check airman is adequately trained to perform his or her assigned duties. Prior to implementation, the certificate holder must obtain initial and final FAA approval of the training program.

* * * * *

§ 135.333 [Removed]

13. Remove § 135.333.

14. Add subpart K, consisting of §§ 135.501 through 135.504, to read as follows:

Subpart K—Hazardous Materials Training Program

§ 135.501 Applicability and definitions.

(a) This subpart prescribes the requirements applicable to each certificate holder for training each person performing or supervising any of the following functions involving any item for transport on board an aircraft:

(1) Acceptance;

(2) Rejection;

(3) Handling;

(4) Storage incidental to transport;

(5) Packaging of company material;

(6) Loading;

(7) Unloading; or

(8) Carriage.

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

(1) *Company material (COMAT)*—Material owned or used by a certificate holder.

(2) *Initial hazardous materials training*—The basic training required for each newly hired person, or each person changing job functions, who performs or supervises any of the functions specified in paragraph (a) of this section.

(3) *Recurrent hazardous materials training*—The yearly training required for each person who has satisfactorily completed the certificate holder's approved initial hazardous materials training program and performs or supervises any of the functions specified in paragraph (a) of this section.

§ 135.502 Hazardous materials training: General.

(a) Each certificate holder must establish and implement a hazardous materials training program that:

(1) Satisfies the requirements of Appendix N of part 121 of this chapter;

(2) Ensures that each person performing supervising any of the functions specified in § 135.501(a) is trained in accordance with 49 CFR 172.700 and the requirements of this subpart; and

(3) Enables the trained person to recognize items that contain, or may contain, hazardous materials regulated by 49 CFR parts 171 through 180.

(b) Each certificate holder must provide initial hazardous materials training and recurrent hazardous materials training to each person performing or supervising any of the functions specified in § 135.501(a).

(c) Each certificate holder's hazardous materials training program must be approved by the FAA prior to implementation.

§ 135.503 Hazardous materials training required.

(a) *Training requirement.* Except as provided in paragraphs (b), (c) and (f) of this section, no certificate holder may use any person to perform any of the functions or supervisory responsibilities, and no person may perform any of the functions or supervisory responsibilities, specified in § 135.501(a) unless that person has satisfactorily completed the certificate holder's FAA-approved initial or recurrent hazardous materials training program within the past year.

(b) *New hire or new job function.* A person who is a new hire and has not yet satisfactorily completed the required initial hazardous materials training, or a person who is changing job functions and has not received initial or recurrent training for a function involving storage incidental to transport, loading, or unloading of items for transport on an aircraft, may perform those functions for not more than 30 days from the date of hire or a change in job function, if:

(1) The person is under the direct visual supervision of a person who is authorized by the certificate holder and who has successfully completed the certificate holder's FAA-approved initial or recurrent training program within the past year;

(2) The supervisor-to-worker ratio is approved by the principal security inspector or the principal operations inspector.

(c) *Persons who work for more than one certificate holder.* A certificate holder that uses or assigns a person to perform or supervise a function specified in § 135.501(a), when that person also performs or supervises the same function for another certificate holder, need only train that person in its own policies and procedures regarding those functions, if all of the following are met:

(1) The certificate holder using this exception receives written verification from an authorized, knowledgeable person representing the other certificate holder that the person has satisfactorily completed hazardous materials training for the specific function under the other certificate holder's approved training program under Appendix N of part 121 of this chapter; and

(2) The certificate holder who trained the person has the same operations specifications regarding the acceptance, handling, and carriage of hazardous materials as the certificate holder using this exception.

(d) *Recurrent hazardous materials training—Completion date.* A person who satisfactorily completes recurrent hazardous materials training in the calendar month before, or the calendar month after, the month in which the recurrent training is due, is considered to have taken that training during the month in which it is due. If the person completes this training earlier than the month before it is due, the month of the completion date becomes his or her new anniversary month.

(e) *Repair stations.* A certificate holder must ensure that each repair station performing work on the certificate holder's behalf is notified in writing, and is aware of, the certificate holder's policies and operations specifications regarding the acceptance, rejection, handling, storage incidental to transport, and carriage of hazardous materials, including company material. This notification requirement applies only to repair stations that handle, use, or replace material regulated by 49 CFR parts 171 through 180, including consumable hazardous materials and aircraft parts containing hazardous materials.

(f) *Certificate holders operating at foreign locations.* This exception applies if a certificate holder operating at a foreign location where the country requires the certificate holder to use persons working in that country to load and unload aircraft. In such a case, the certificate holder may use those persons even if they have not been trained in accordance with the certificate holder's approved hazardous materials training program. Those persons, however, must be under the direct visual supervision of someone who has successfully completed the certificate holder's approved initial or recurrent hazardous materials training program in accordance with this part. This exception applies only to those persons who load or unload aircraft.

§ 135.504 Hazardous materials training records.

(a) *General requirement.* Each certificate holder must maintain a record of all training required by this

part received within the preceding three years for each person who performs or supervises a function specified in § 135.501(a). The record must be maintained during the time that the person performs or supervises any of those functions, and for 90 days thereafter. These training records must be kept for direct employees of the certificate holder, as well as independent contractors, subcontractors, and any other person who performs or supervises these functions for the certificate holder.

(b) *Location of records.* The certificate holder must retain the training records required by paragraph (a) of this section at the location where the trained person performs or supervises the function specified in § 135.501(a). When the person ceases to perform the function, the certificate holder must retain these records at the last location where the person performed the function for an additional 90 days.

(c) *Content of records.* Each record must contain the following:

(1) The person's name and function performed or supervised;

(2) The dates of each training course successfully completed within the preceding three years;

(3) A statement signed and dated by a person designated by the Director of Training certifying that the person has completed training in accordance with the certificate holder's approved hazardous materials training program; and

(4) A description of each training course successfully completed by the person that includes for each course:

(i) Date of the course;

(ii) Subject matter of the course and training area covered;

(iii) Number of hours of the course;

(iv) Instructor's name and signature indicating the person's successful completion of the course, and the person's name and signature indicating the person's attendance; and

(v) Name and business address of the organization or professional instructor providing the training.

(d) *New person or new job function.* Each certificate holder using a person under the exception provided in § 135.503(b)(1) must maintain a record for that person at the location where the person performs the function. The record must include the following:

(1) A signed statement from an authorized representative of the certificate holder authorizing the use of the person in accordance with the exception;

(2) The date of hire or change in job function;

(3) The person's name and assigned function;

(4) The name of the supervisor of the function; and

(5) The date the person is to complete hazardous materials training in accordance with Appendix N of part 121 of this chapter.

PART 145—REPAIR STATIONS

15. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44717.

16. Add § 145.5 to read as follows:

§ 145.5 Hazardous materials training.

(a) Except for repair stations that are already subject to the training requirements of part 121 or part 135 of this chapter, each repair station that uses or replaces aircraft components, uses or handles consumable hazardous materials or other items regulated by 49 CFR parts 171 through 180 and that meets the definition of a hazmat employer under 49 CFR 171.8 must have a hazardous materials training program that meets the training requirements of 49 CFR 172.700 through 172.704.

(b) A person may not perform or supervise a function for a repair station or a certificate holder involving acceptance, rejection, handling, storage incidental to transport, packaging of material owned or used by a part 119 certificate holder (commonly referred to as company material or COMAT) for transport on the certificate holder's aircraft, loading, unloading or carriage of items for transport on an aircraft operated by a part 121 or part 135 certificate holder unless that person has received training in accordance with the part 121 or part 135 certificate holder's approved hazardous materials training program.

17. Amend § 145.11 by adding paragraph (a)(5) to read as follows:

§ 145.11 Application and issue.

(a) * * *

(5) A certification that, at the time of application, all hazmat employees are trained as required by 49 CFR 172.704 for the repair station, its contractors, or subcontractors, that handles or replaces aircraft components, or handles or uses consumable hazardous materials or other items that are regulated by 49 CFR parts 171 through 180.

* * * * *

18. Add § 145.27 to subpart A to read as follows:

§ 145.27 Notification of hazardous materials authorizations.

Each repair station must notify all workers of each certificate holder's operations specifications authorization permitting, or prohibition against, carrying hazardous materials, upon notification by the certificate holder of such operations specifications authorization/designation.

Issued in Washington, DC on May 1, 2003.

Ross Hamory,

Director, Security and Investigations.

[FR Doc. 03–11244 Filed 5–7–03; 8:45 am]

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Part IV

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1410

2002 Farm Bill—Conservation Reserve Program—Long-Term Policy; Interim Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1410

RIN 0560–AG74

2002 Farm Bill—Conservation Reserve Program—Long-Term Policy

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Commodity Credit Corporation (CCC) amends the Conservation Reserve Program (CRP) regulations to set forth the terms and conditions of enrolling acreage in the CRP, update program eligibility requirements, eliminate unnecessary regulations and improve the remaining regulations. This action is being taken to cost-effectively target the CRP to more environmentally sensitive acreage and to comply with amendments made by the Farm Security and Rural Investment Act of 2002 (2002 Act).

DATES: This rule is effective May 5, 2003. Comments must be received on or before July 7, 2003 to be assured of consideration.

ADDRESSES: Comments should be directed to Matt Ponish at Mangi Environmental Group, 7915 Jones Branch Drive, Suite 2300 McLean, Virginia 22102, by calling 800–760–1421, by faxing at 703–760–4899, or by e-mail at *crprulecomment@mangi.com.*

FOR FURTHER INFORMATION CONTACT: Beverly J. Preston, CRP Program Manager, at USDA/FSA/CEPD/STOP 0513, 1400 Independence Avenue SW., Washington, DC 20250–0513; telephone 202–720–9563; e-mail: *Beverly Preston@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (braille, large print, audiotape, etc.) should contact the USDA Target Center at 202–720–2600 (voice and ADD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. A Cost/Benefit Analysis was completed and is summarized following the Background section.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. CCC is authorized by section 2702 of the 2002 Act to issue an interim rule.

Environmental Evaluation

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508); and FSA's regulations for compliance with NEPA at 7 CFR part 799. It was determined that this rule constitutes a major Federal action. Therefore, FSA completed a final Environmental Impact Statement, which is on file and available to the public in the Administrative Record at the address specified in the **ADDRESSES** section. It is also available electronically at: *http://www.fsa.usda.gov/dafp/cepd/epb/nepa.htm.*

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions that impose ''Federal Mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. This rule contains no Federal mandates as defined by Title II of UMRA. Therefore, this rule is not subject to sections 202 and 205 of the UMRA.

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, is the Conservation Reserve Program—10.069.

Paperwork Reduction Act

The 2002 Act specified that the issuance of regulations promulgated pursuant to this new authority would be made without regard to chapter 35 of title 44, U.S. Code (commonly known as the ''Paperwork Reduction Act'').

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778. The provisions of this rule are not retroactive and preempt State and local laws that are inconsistent with this rule. Before any judicial action may be brought concerning this rule, appeal rights afforded program participants at 7 CFR parts 11, 624, and 780 must be exhausted.

Government Paperwork Elimination Act

FSA is working to comply with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are not yet fully implemented for the public to conduct business with FSA electronically.

Currently, four CRP forms are available electronically through the USDA eForms Web site at *www.sc.egov.usda.gov* for downloading and regulations are available on the Internet at *www.fsa.usda.gov/dafp/cepd.* Offers may be submitted at FSA county offices, by mail, or by FAX. At this time, electronic submission is not available, but full implementation of electronic submission is underway.

Background

This rule revises the regulations of the Conservation Reserve Program (CRP) at 7 CFR part 1410 to improve the overall administration of the program and to implement statutory changes to the CRP. The CRP was first authorized by the Food Security Act of 1985 (1985 Act), which was recently amended by the Farm Security and Rural Investment Act of 2002, Public Law 107–171 (2002 Act), which, among other things, provided the Secretary of Agriculture (Secretary) the authority to maintain up to 39.2 million acres in the CRP. The purpose of the CRP continues to be cost-effectively assisting producers in conserving and improving soil, water, and wildlife resources by converting highly erodible and other environmentally-sensitive acreage generally devoted to the production of agricultural commodities to a long-term vegetative cover. CRP participants enroll land under contracts for 10 to 15 years in exchange for annual rental payments and financial assistance to install certain conservation practices and to

maintain approved vegetative or tree covers.

Native seed and vegetation species that are suited to the soil and climatic conditions of a site provide high wildlife benefits. Accordingly, FSA encourages the use of native vegetation whenever suitable. The CRP application selection criteria (*i.e.*, the Environmental Benefits Index (EBI)) gives greater weight to contract offers that devote acreage to native seeds and plantings that are consistent with the ecosystem (discussed below). In some cases, however, critical area planting (*e.g.*, land that is severely sloped or has high potential for erosion) may require the use of introduced vegetation species because they can stabilize the soil more quickly in order to protect the soil and water resources. In addition, introduced species may be easier to establish and provide more cost-effective conservation covers.

In determining the amount of annual rental payments to be paid, CCC considers, among other things, the amount necessary to encourage owners or operators of eligible land to participate in the CRP. The maximum rental payment CCC will pay reflects site-based soil productivity, prevailing local cash-equivalent rental rates, and maintenance costs. Offers to participate in the CRP are submitted in such a manner as the Secretary prescribes. Requests for rental payments greater than the amount that CCC determines to be reasonable for the area and soil type are automatically rejected. In order to maximize the environmental and conservation benefit of the funds to be expended, conservation practices and the land for which offers may be accepted may vary as conditions change.

CCC conducts periodic, competitive general signups in which all offers are ranked competitively based on their environmental benefits considering the cost of the contract. The acceptability of such offers is determined by a formula based upon a number of environmental factors and benefits. Along with the cost of enrolling the acreage, these factors are used to construct an EBI to compare offers.

CCC scores general signup offers using the EBI, which measures the anticipated environmental benefits from several factors and costs. The Department has used an EBI to prioritize and rank CRP offers since the tenth signup in March 1991. It was developed to comply with the section 1234(c) of the 1985 Act. The goal of the EBI is to provide a relative rank order of submitted offers based on environmental factors and cost in a uniform and consistent manner for all offers. In addition, the EBI provides incentives to increase cost-effectiveness. Ultimately, the EBI is used to rank the anticipated environmental benefits from each CRP offer.

The EBI considers a number of environment factors, including water quality, soil erosion, air quality, and enduring benefits. In addition to these factors, wildlife and the quality of vegetation for wildlife habitat are factors in the ranking criteria. Because native grasses generally offer better habitat than introduced grasses, the FSA has revised the EBI selection criteria to give greater weight to the use of native seed and vegetation species. This provides incentives for producers to offer and use native species in their CRP contracts.

The effect of the greater EBI weight given for using species can be seen by examining the change in the proportion of CRP enrolled acres planted in native grasses. In 1993, when there were nearly 30 million acres of grass in the CRP, only 28 percent of these acres were planted in native grasses. Since 1998, 67 percent of the grasses established under new CRP contracts used native grasses.

Since 1996, between 70,000 and 280,000 offers were received during each four- to six-week signup period. Environmental data were collected for each of the EBI ranking factors and subfactors. Each offer was assigned a point score based upon the relative environmental indices scores. All offers were ranked in comparison to all other offers and the selections were made from that ranking.

CCC also conducts continuous, non-competitive signup of certain acreage. Under the CRP continuous signup process implemented in September 1996 and the Conservation Reserve Enhancement Program (CREP) signup process implemented in February 1997, only those practices determined to have relatively high environmental benefits are eligible. Acreage determined to be eligible for the continuous CRP or CREP signup is automatically accepted if all other eligibility requirements are met. Continuous signup affords farmers and ranchers the management flexibility in implementing certain working lands conservation practices on cropland such as filter strips, riparian buffers, shelterbelts, field windbreaks, living snow fences, grass waterways, shallow water areas for wildlife, salt-tolerant vegetation and practices to protect certain approved public wellhead protection areas. These practices are designed to achieve significant environmental benefits, giving participants a flexible option to enroll acres on a continuous basis to help protect and enhance wildlife habitat, improve air quality, and improve the condition of streams, rivers, and permanent water bodies. While acreage is accepted on a non-competitive basis, the practices provide environmental benefits that likely would consistently exceed the highest EBI score making this acreage acceptable for enrollment under a general signup.

Further, CCC may enter into a CREP agreement with States, Tribes, local governments, or private entities to use the CRP to cost-effectively address specific conservation and environmental issues of the State and the nation. Proposals, developed locally and submitted for approval by the Secretary, must address resource concerns, provide for cooperation with the CREP partners, present clear program goals with measurable objectives, and detail non-federal financial contributions.

The 2001 Agricultural Appropriations Act amended the 1985 Act and authorized a Farmable Wetlands Pilot Program (FWP) to enroll in the States of Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota certain wetlands and buffer acreage on a pilot basis. Enrollment under this pilot could not exceed 500,000 acres for all States and 150,000 acres in any State. The maximum enrollment for both the wetland and buffer acreage could not exceed 40 acres per tract. Also, wetlands could not exceed five acres in size to be eligible for enrollment. Acreage enrolled must be cropland that has a cropping history in at least three of the most recent ten years. Acreage offered under this pilot uses the CRP's continuous signup procedures.

On December 6, 2001, CCC published a proposed rule (66 FR 63339) that proposed a series of amendments that, if adopted, would make certain orchard lands, vineyards, berry lands, and hay lands eligible for enrollment, provide for acquisition of private sector technical assistance and make minor technical and clerical adjustments to the regulations. This action was taken to allow producers greater flexibility in enrolling in the CRP and enhance the environmental benefits under the CRP. CCC proposed that for the continuous signups held for the CRP and for enrollments in the CREP, certain orchard lands, vineyards, berry fields, and hay land be permitted to be enrolled. The 2002 Farm Bill broadened land eligibility to include hay lands if the land is otherwise cropland that has been devoted to a conserving use and expanded authority for the use of private-sector and other technical service providers. These provisions are

included in this interim rule. Fourteen comments supported the inclusion of certain orchard lands, vineyards, or berry lands as proposed. There were no comments opposed to the proposed inclusion. Therefore, the interim rule also makes certain orchard lands, vineyards, or berry lands eligible for enrollment under the continuous CRP and CREP.

Discussion of the Interim Rule

Based on the 2002 Act and FSA discretion, changes have been made to cropping history requirements, eligible land, the EBI, the FWP, managed haying and grazing authorities, and providers of technical assistance.

Generally, by statute, CRP land enrolled in the program must be cropland, but the rules for the program provide that the crop history must generally be a history of production of tillable crops. That limitation provides for focusing the CRP on the conversion of land with the most intensive uses to a cover crop. Also, this focus emphasizes the ''reserve'' nature of the program and can provide a greater amount of public benefit by producing savings in other programs as recompense for the funds spent on this program.

This rule, at 7 CFR part 1410.6(a)(3)(b)(13), makes certain orchard lands, vineyards and berry lands eligible for the continuous sign-ups held for the CRP and for enrollments in the CREP. FSA has determined that these lands could provide significant environmental benefits in these signups which involve certain geographical practices such as conservation buffers along stream banks. Such an expansion of the eligibility criteria for the program was requested by a number of State governments involved in CREP agreements.

Cropping History Requirements

This rule, at 7 CFR part 1410.6(a), changes the cropping history requirements required for certain land to be eligible. Before, by rule, land must have been cropped in two of the five years preceding enrollment to be eligible. However, the 2002 Act changed that requirement so that cropland, to be eligible, must be planted or considered planted for four of the six years preceding the date of enactment of the 2002 Act on May 13, 2002. Also, in 7 CFR part 1410.6, this rule provides that land may be eligible if it was devoted to a conserving use under section 1231(c) of the 1985 Act. For CRP purposes, conserving use means, during 1996 through 2001, any planted alfalfa and planted other multi-year grasses and legumes and summer fallow in a rotation with agricultural commodities are defined as conserving uses for CRP purposes.

Other Changes in Land Eligibility Requirements

The 2002 Act amendments to the 1985 Act expanded eligibility authority for marginal pasture land from riparian buffers ''devoted to trees'' to ''devoted to appropriate vegetation, including trees,'' in or near riparian areas. Thus, under 7 CFR part 1410.6, CCC has made marginal pasture land acreage eligible if it is devoted to a riparian buffer practice, a new wetland practice, or a new wildlife habitat buffer practice. This enhancement will allow riparian buffers, wetlands, and wildlife habitat practices intrinsically valuable in addressing Federal and State environmental and wildlife issues near streams, rivers, or other water bodies to be established where tree plantings are not practical or appropriate. These practices improve water quality, reduce flood and storm event damage, help control soil erosion, and provide important fish and wildlife habitat. Certain wetlands are also valuable in providing filtering functions because of their location between land and water.

The 2002 Act amendments also extends eligibility to cropland when enrollment would facilitate a net savings in groundwater or surface water resources of the agricultural operation of the producer. To implement this new provision, CCC has added to the list of eligible conservation practices in 7 CFR part 1410.6 a practice that has water savings as its primary function. Water savings will advance the goal of providing the nation and States with adequate water to meet farming and ranching needs as well as the needs of an increasing population.

Another new land eligibility provision in the 2002 Act amendments provides that the remainder of cropland in a field that is not enrolled as a ''buffer'' may be enrolled if it is less than 50 percent of the cropland in that field, is infeasible to farm, and is enrolled at regular enrollment rates. For this provision, at 7 CFR part 1410.6 provides that a ''buffer'' will be considered to be riparian buffers, filter strips, or areas buffering wellhead protection areas. ''Infeasible to farm'' is defined as areas that are too small or isolated to be economically farmed, as determined by the FSA.

The 2002 Act also made land enrolled in the CRP but nearing contract completion eligible for new enrollment. Accordingly, any acreage currently in the CRP will be basically eligible to be offered for continued enrollment if the current contract is scheduled to expire the day before a new contract would become effective. However, land will be ineligible for enrollment if it is subject to a CRP useful life easement that extends beyond the current contract term. The interim rule provides that re-enrollment of currently enrolled acreage will be based on the same criteria as for enrolling new acreage.

The EBI has been modified after extensive negotiations with resource professionals from the Forest Service, Natural Resource Conservation Service (NRCS), U.S. Environmental Protection Agency, U.S. and Wildlife Service (FWS), U.S. Geological Survey (USGS) and others and from public scoping and public comments submitted during development of the programmatic environmental impact statement.

The 2002 Act made no changes to the EBI authority. However, the EBI has been re-engineered to continue to encourage the restoration of plantings consistent with the ecosystem where the land is offered. The EBI has also been simplified to enable producers to run different scenarios independently, reduce error rates, improve customer service by significantly reducing the time needed for a producer to submit an offer, and reduce resources needed to process an offer.

The index may include consideration of soil erosion, water quality, wildlife habitat, enduring benefits, air quality, and cost while also including consideration of other technical factors such as recommendations of the State technical committee, conservation priority areas, permanent wildlife habitat, and tree plantings.

Farmable Wetlands Program (FWP)

Under the 2002 Act amendments, the FWP, at 7 CFR part 1410.11, was expanded from a six-State pilot to all States and may include up to a total of 1 million acres. In general, up to 100,000 acres may be enrolled in any State, except that enrollment of a State may be increased to 150,000 acres after 3 years. The 2002 Act amendments also changed the maximum size of any wetland enrolled under the FWP from five to ten contiguous acres, of which not more than five acres shall be eligible for payment. No more than 40 acres from a tract may be enrolled under the FWP. All acres, including acres ineligible for payment, must be maintained according to an approved conservation plan.

Managed Haying and Grazing

Before the 2002 Act amendments, the 1985 Act generally provided that no

commercial use could be made of land enrolled in CRP but permitted haying or grazing during droughts or similar weather-related emergencies. The 2002 Act amended that provision by adding an exception for managed harvesting and grazing, including the managed harvesting of biomass and the installation of wind turbines.

Wind turbines generally have a limited impact on the environment due to their small footprint of approximately one-tenth acre. They are non-polluting sources of energy and generally have a limited impact on wildlife. Wind turbines will be installed according to standards and in such numbers as determined appropriate by FSA.

Managed haying and grazing is anticipated to be a useful tool to manage CRP stands and to assist CRP participants in managing their operation. Allowing non-emergency managed haying and grazing, conducted in accordance with a conservation plan, will increase the amount of cover disturbance that will occur. Managed disturbance of vegetative covers (*i.e.*, a disturbance cycle) established on CRP land generally increases diversity and quality of vegetative covers and improves wildlife habitat benefits. Based on surveys of CRP participants, these managed haying uses could potentially affect about 25 percent of eligible CRP grassland acreage. Haying and grazing will be limited to no more than once every 3 years, depending on conservation plan guidelines, with additional restrictions in environmentally sensitive areas or practices.

All haying and grazing activities will be conducted only after a detailed conservation plan is developed for haying or grazing management according to the NRCS Field Office Technical Guide (FOTG) haying and grazing standards. The conservation plan will ensure the long-term viability of the stand while protecting and enhancing the soil, water, wildlife and other natural resources of the CRP acreage. The conservation plan will require the control of noxious weeds and other weeds, insects, and pests. All haying and grazing activities must be conducted consistent with the terms and conditions of the haying and grazing management plan. USDA will conduct compliance reviews to ensure compliance.

In November 2001, a panel of grassland ecologists with special expertise in grassland bird ecology representing academia, Government and non-profit organizations developed a number of consensus recommendations for guidance regarding haying and grazing of CRP as well as long-term protection of existing grasslands.

The panel's consensus view was ''to establish a general rule favoring grazing 1 in 3 years on one-third of the enrolled CRP lands.'' Other species-specific haying and grazing requirements were also recommended. However, FSA was advised that the specific recommendations assumed a mono-culture for a particular species (*e.g.*, short-grass prairie) and did not take into account the landscape's natural diversity. Therefore, FSA adopted the NRCS FOTG haying and grazing standard to augment the panel's consensus view.

FSA determined that managed haying and grazing of CRP acreage once every 3 years as recommended by the grassland ecologist panel was the appropriate disturbance cycle. State committees will not be establishing disturbance cycles more frequently than the 1-in-3 year cycle. Less frequent disturbance cycles may be established by State committees with State Technical Committee consultation. The year 2003 will be considered year 1 of the management cycle for all CRP contracts in effect. For all new CRP contracts, the disturbance cycle will begin when the cover is established.

For contracts where all eligible acreage is already established, year 1 of the disturbance cycle will begin during the first managed haying and grazing period after the CRP contract is approved. For contract acreage where an acceptable cover may need to be established, year 1 will begin during the managed haying and grazing period 12 months after the applicable cover is fully established. This will ensure that the applicable acreage will be capable of withstanding the applied haying or grazing pressure without failing to recover.

Farm Service Agency State committees, in consultation with State technical committees, will determine the beginning of the primary nesting and brood rearing season during which managed haying and grazing will not be performed. The ending dates were established by FSA, in consultation with the FWS, in the 1990's and are not intended to be changed. The appropriate managed haying and grazing period, which may not overlap with the primary nesting and brood-rearing season, will be determined by the FSA State committee in consultation with the NRCS State technical committee.

Managed haying and grazing will interact with emergency authorizations of haying and grazing by including acres hayed or grazed under the emergency authority into the managed haying and grazing disturbance cycle. Thus, any acreage hayed or grazed under emergency authority would not be eligible to be hayed or grazed under managed haying or grazing provisions the following 2 years. Managed haying or grazing of CRP does not affect the eligibility of CRP acreage for emergency haying or grazing.

Emergency Haying and Grazing

Under existing emergency authority, any eligible CRP acreage may be hayed or grazed each year the county is approved. Under the new rule, any CRP acreage eligible for emergency haying or grazing within the county may be hayed or grazed within the emergency authorization regardless of whether it was hayed or grazed in previous years under managed provisions or emergency authority. This would remain consistent with current emergency authority. However, any eligible acreage hayed or grazed under either managed or emergency provisions would not be eligible for managed haying or grazing for the next two years.

Providers of Technical Assistance

The CRP is carried out by CCC through FSA using FSA State and county offices. The Farm Service Agency supplements its staff by using providers of technical assistance including, for example, NRCS, FS State foresters, individuals, private-sector entities, and public agencies certified under the regulations at 7 CFR part 652.

Conservation Priority Areas (CPA's)

Land designated as either a State or National CPA is considered eligible to be offered for enrollment in the CRP (provided it meets the cropping history and physically and legally capable of being cropped standards). Although land is considered eligible for enrollment, the offer is not automatically acceptable. CPA's are designated based on entire counties or hydrologic unit codes (HUC's). All CPA's must have a primary purpose of wildlife, water quality, or air quality. State and National CPA's may have a designated zone associated with the CPA. The zone must be designated as either a wildlife, water quality, or air quality zone. Acreage offered for enrollment in the CRP that is designated as a CPA and is located within the applicable zone is awarded EBI points.

The 2002 Act re-authorized the watershed areas of the Chesapeake Bay Region, the Great Lakes Region, the Long Island Sound Region, and other areas of special environmental sensitivity to be designated as conservation priority areas for a period

of 5 years, subject to re-designation. The purpose of the conservation priority area designation is to enhance the CRP by better addressing conservation and environmental issues in a planned and coordinated manner within a State. In addition to the national priority areas provided in the 1985 Act, CCC re-authorized two other national conservation priority areas: the Prairie Pothole and Longleaf Pine Regions with certain adjustments, as explained later. CCC will continue national conservation priority areas after reviewing and revising them, as appropriate, to conform to HUC's or county boundaries.

CCC also re-authorized State conservation priority areas. Prior to the 2002 Act, State conservation priority areas were limited to no more than 10 percent of the cropland (net of any national conservation priority area) in the State. When requesting conservation priority area designation, FSA State committees were required to develop an evaluation and monitoring system to determine the effectiveness of designating a particular area as a priority. Designations are valid for 5 years and many of these areas are approaching the expiration of their 5-year designation.

The regulations at 7 CFR part 1410.8 authorize FSA State committees to designate State conservation priority areas after consulting with the NRCS State technical committee. Conservation priority areas make cropland basically eligible for enrollment. Other qualifications including the physically and legally capable of being cropped standards at 7 CFR part 1410.6 and ownership eligibility at 7 CFR part 1410.5 continue to apply. This rule, in 7 CFR part 1410.8, changes the total area in a State eligible to be designated as a State conservation priority area from no more than 10 percent to no more than 33 percent of the cropland in the State. This change increases local flexibility in enrolling eligible land into the program and provide local natural resource managers increased flexibility in achieving environmental improvement and in achieving water quality objectives under the Clean Water Act. The increase from 10 percent to 33 percent will assist USDA in addressing certain water quality issues and is consistent with water quality areas designated for certain environmental benefit ranking factors.

Mid-Contract Cover Management

USDA will require that all new covers under new contract to be maintained and managed in a manner that will maximize wildlife benefits while ensuring soil, water, and other resources are protected. Eligible management activities incorporating native seeds and planting will be developed by FSA State committees based on recommendations from State technical committees with input from resource professionals with knowledge of wildlife, forestry, hydrology and other appropriate disciplines. Other management activities could include light discing and burning. Mid-cover management shall be conducted according to an approved conservation plan as part of the CRP contractual obligation that will maximize wildlife benefits while ensuring soil, water, and other resources are protected as determined by FSA.

Request for Comment

The regulations at 7 CFR part 1410.30 provide for enrollment methods that generally include periodic competitive signup periods and, for certain environmental practices, continuous non-competitive enrollments. Since 1996 when continuous signup was authorized, FSA has expanded the kinds of environmental practices to meet legislative and other needs. The added practices include contour grass strips on terraces, two farmable wetland practices and the marginal pasture land practices. Further, USDA recently announced the intention to include certain hardwoods under continuous signup.

We request comments on environmental and other criteria that should be used to qualify practices for a continuous signup and to distinguish the non-competitive from the competitive general signup.

Cost-Benefit Assessment (CBA)

The CBA analyzes the environmental, economic, and budgetary impacts of enrolling additional land in CRP under provisions of the accompanying rule. Principal issues analyzed are land eligibility changes and extension of authority to enroll new lands in CRP. Two enrollment options are considered: (1) Enrollment of additional acres under general signup provisions to reach the statutory maximum enrollment of 39.2 million acres and (2) enrollment of additional acreage under general signup provisions up to the pre-existing 36.4 million-acre cap. The first scenario is the selected option. It corresponds to enrollment levels included in the Office of Management and Budget's Fiscal Year (FY) 2003 Mid-Session Review budget baseline, and includes enrollment of an additional 2.8 million acres compared with option 2. Other issues analyzed include basic cropland and resource-based eligibility criteria, FWP expansion, eligibility of infeasible-to-farm field remainders, and management of enrolled fields to maintain and improve vegetative vigor and diversity.

Cropland eligibility will be based on crop history during 1996 through 2001. To be eligible, land must have been cropped, considered cropped, or in conserving uses in at least 4 of the 6 years. Land planted to an agricultural commodity at least 4 of the 6 years is estimated to total 310 million acres. Allowing land in crop/fallow rotations adds about 28.3 million acres, primarily in the Northern Plains and Mountain regions where wheat/fallow rotations are common. Including land in hay/crop rotations (25.2 million acres) brings total land meeting crop history requirements to 363.5 million acres, a 1.9 million-acre (0.5 percent) increase from estimated eligibility under prior provisions.

About 268 million acres, or 74 percent, of land meeting crop history requirements are estimated to meet one or more resource-based eligibility criteria, including 104 million acres of highly erodible cropland, 116 million acres in national conservation priority areas, and up to 94 million acres in State conservation priority areas. Because CRP enrollment in a county is limited to 25 percent of cropland in the county, only about 106 million of these acres are potentially enrollable.

Allowing non-emergency managed haying or grazing, conducted in accordance with a conservation plan, will increase the amount of cover disturbance that will occur. Managed disturbance of vegetative covers established on CRP land generally increases diversity and quality of vegetative covers, improving wildlife habitat benefits. Based on surveys of CRP participants, these managed uses could potentially affect about 25 percent of eligible CRP grassland acreage. Haying and grazing will be limited to no more than once every 3 years, depending on conservation plan guidelines, with additional restrictions in environmentally sensitive areas or practices. Thus, around 2 to 3 million acres could be hayed or grazed in any year, improving wildlife habitat benefits on a total of about 7 million acres. If the current 25-percent payment reduction is applied and there is equitable regional distribution of participation, CRP outlays could be reduced by $20 million to $25 million per year.

Establishing long-term vegetative cover on the additional 2.8 million acres of cropland enrolled under the selected option (option 1) will provide numerous environmental benefits. Soil productivity is enhanced because erosion is essentially ceased during the 10- to 15-year contract period. CRP enrollment reduces sheet and rill (water

driven) soil erosion, and the quantity of agricultural pollutants available to reach water bodies and impair water uses. Reduced wind erosion provides air quality benefits. The additional 2.8 million acres will reduce estimated annual erosion 21 million tons compared with 1997 erosion rates: sheet and rill and wind erosion will be reduced by about 10 million tons and 11 million tons, respectively. Carbon sequestration, the storage of carbon in soils and vegetation, will increase by an estimated 1.3 million metric tons per year.

While comprehensive estimates of changes in wildlife populations are not generally available, expanded and enhanced wildlife habitat should result in substantial increases in the abundance of game and non-game species. Many CRP practices are specifically or primarily directed toward improving wildlife habitat. Almost 10 million acres are currently enrolled in conservation priority areas, selected for wildlife habitat enhancement purposes. Over 3 million acres of specific wildlife practices, including wildlife corridors, shallow water areas for wildlife, riparian buffers, and wetland restoration, currently provide critical wildlife habitat benefits. In addition, 1.4 million flood-prone and riparian area acres and 3.4 million cropped wetland and wetland complex acres are currently enrolled. Wildlife benefits are further enhanced by establishment of 374,000 acres of rare and declining habitats, 2.3 million acres of permanent wildlife habitat, and enrollment of 92,000 acres of former water bank land. Many of these wildlife-enhancing practices will be included in the 2.8 million acres enrolled under the selected option.

Comprehensive measures of environmental benefit values obtained from enrolling environmentally sensitive land in CRP do not currently exist. Published estimates of CRP benefits, based on currently and previously enrolled acreage, using indirect measures or secondary sources generally provide regional estimates of benefits per acre enrolled or per ton erosion reduction. Using these derived estimates enrolling the additional 2.8 million acres is estimated to provide environmental benefits of $129 million per year. These benefits include: $11 million from improved soil productivity, $19 million from improved surface water quality, $41 million from enhanced wildlife viewing opportunities, $57 million in small game and migratory waterfowl hunting benefits, and $2 million in air quality benefits. Many major benefit categories are not yet quantified, including benefits from numerous recreational activities, big game hunting, flood-control, wetland restoration, groundwater quality, improved human health from improved water and air quality, fishing, and carbon sequestration.

With about 350 million acres typically in crop production annually, idling an additional 2.8 million acres under CRP (less than 1 percent of plantings) will have minimal impacts on crop production, crop prices, and farm income. Net crop sector income is estimated to increase $307 million per year (1 percent) during the 2003–2012 crop years, due to the additional CRP enrollment. This increase is a result of larger estimated market-based net returns ($349 million per year), decreased commodity program payments ($186 million per year), and increased net CRP payments ($144 million per year) over the 10-year period. Underlying these changes is a 900,000 acre estimated decline in combined wheat, feed grains, and soybean plantings per year over the period. As a result of these reduced plantings, crop prices are estimated to increase on average $0.02 per bushel for wheat, $0.02 for corn, $0.01 to $0.02 for other feed grains, and $0.06 for soybeans per year.

Total CRP outlays are estimated to increase $1.5 billion, while commodity program outlays are estimated to decline about $1.7 billion during FY 2003 through 2012, primarily due to a $1.5 billion counter-cyclical payment decline. The additional 2.8 million-acre enrollment is estimated to decrease combined CRP and commodity program outlays by $208 million annually during the 10-year period.

Total estimated impacts for the additional CRP enrollment, including $326 million annual economic losses due to higher crop prices and reduced crop supplies (buyers' loss) and estimated average annual economic benefits (increased farm incomes and environmental benefits), results in estimated net economic benefits of $131 million per year. This amount probably understates the net impacts to society because many of the environmental benefits are not included.

List of Subjects in 7 CFR Part 1410

Administrative practices and procedures, Agriculture, Conservation plan, Contracts, Environmental protection, Natural resources, Soil conservation, Water resources, and Wildlife.

■ Accordingly, 7 CFR part 1410 is revised to read as follows:

PART 1410—CONSERVATION RESERVE PROGRAM

Sec.

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Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

§ 1410.1 Administration.

(a) The regulations in this part will be implemented under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), the Administrator, Farm Service Agency (FSA), or a designee, or the Deputy Administrator, FSA. In the field, the regulations in this part will be implemented by the FSA State and county committees (''State committees'' and ''county committees,'' respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless

specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee, but which has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation of authority herein to a State or county committee shall preclude the Executive Vice President, CCC, the Administrator, FSA, or a designee, or the Deputy Administrator, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by prospective participants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(f) Notwithstanding other provisions of this section, the Erodibility Index (EI), suitability of land for permanent vegetative or water cover, factors for determining the likelihood of improved water quality, and adequacy of the planned practice to achieve desired objectives shall be determined by the Natural Resource Conservation Service (NRCS) or other sources approved by CCC, in accordance with the Field Office Technical Guide (FOTG) of NRCS or other guidelines deemed appropriate by NRCS. In no case shall such determination compel CCC to execute a contract that CCC does not believe will serve the purposes of the program established by this part. Any approved technical authority shall utilize CRP guidelines established by CCC.

(g) CCC may consult with the Forest Service (FS), a State forestry agency, or other organizations as determined by CCC to be necessary for developing and implementing conservation plans that include tree planting as the appropriate practice or as a component of a practice.

(h) CCC may consult with the Cooperative State Research, Education, and Extension Service to coordinate a related information and education program as deemed appropriate to implement the Conservation Reserve Program (CRP).

(i) CCC may consult with the National Marine Fisheries Service, U.S. Fish and Wildlife Service (FWS), or State wildlife agencies for such assistance as is determined necessary by CCC to implement the CRP.

(j) The regulations governing the CRP as of May 12, 2002, shall continue to govern contracts in effect as of that date (see 7 CFR part 1410 contained in the edition of 7 CFR Parts 1200 to 1599 revised as of January 1, 2003). This part shall apply to contracts executed on or after May 13, 2002

§ 1410.2 Definitions.

(a) The definitions in part 718 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced:

(1) By annual tilling of the soil;

(2) On an annual basis by one-trip planters; or

(3) Sugarcane planted or produced in a State.

Annual rental payment means, unless the context indicates otherwise, the annual payment specified in the CRP contract that, subject to the availability of funds, is made to a participant to compensate a participant for placing eligible land in the CRP.

Conservation district means a political subdivision of a State, Indian Tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or Tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation plan means a record of the participant's decisions and supporting information for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems by devoting eligible land to permanent vegetative cover, trees, water, or other comparable measures.

Conservation priority area means an area designated with actual and adverse water quality, wildlife habitat, air quality, or other natural resource impacts related to agricultural production activities or to assist agricultural producers to comply with Federal and State environmental laws or to meet other conservation needs, such as for air quality, as determined by the Deputy Administrator.

Conserving use means any alfalfa, other multi-year grasses and legumes planted during 1996 through 2001, and any summer fallow during 1996 through 2001.

Considered planted means: land devoted to a conserving use or land enrolled in the WBP during the crop year or during any of the 2 years preceding the crop year if the contract expired or will expire during calendar year 2000, 2001, or 2002; cropland enrolled in CRP; or land for which the producer received insurance indemnity payment for prevented planting.

Contour grass strip means a vegetation area that follows the contour of the land that complies with the FOTG and a conservation plan developed under this part.

Contract period means the term of the contract which is not less than 10, nor more than 15 years.

Cost-share payment means the payment made by CCC to assist program participants in establishing the practices required in a contract.

Cropland means land defined as cropland in part 718 of this title, except for land in terraces that are no longer capable of being cropped.

Cropped wetlands means farmed wetlands and wetlands farmed under natural conditions.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, the CRP Program Manager, or a designee.

Erodibility Index (EI) is, as prescribed by CCC, used to determine the inherent erodibility (water or wind) of a soil.

Farmed wetlands means land defined as farmed wetlands in part 12 of this title.

Federally-owned land means land owned by the Federal Government or any department, instrumentality, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

Field means a part of a farm that is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands, other similar features, or crop-lines, as determined by CCC.

Field Office Technical Guide (FOTG) means the official USDA guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, animal resources, and cultural resources applicable to the local area for which it is prepared.

Field windbreak, shelterbelt, and/or living snowfence mean a vegetative barrier with a linear configuration composed of trees, shrubs, or other vegetation, as determined by CCC, that are designated as such in a conservation

plan and that are planted for the purpose of reducing wind erosion, controlling snow, improving wildlife habitat, or conserving energy.

Filter strip means a strip or area of vegetation adjacent to a body of water the purpose of which is to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality and of a width determined appropriate for the purpose by the Deputy Administrator.

Highly Erodible Land (HEL) means land determined to have an EI equal to or greater than 8 on the acreage offered.

Infeasible to farm means an area that is too small or isolated to be economically farmed, as determined by the Deputy Administrator.

Landlord means a person who rents or leases acreage to another person.

Local FSA office means the FSA office serving the area in which the FSA records are located for the farm or ranch.

Offer means, unless the context indicates otherwise, if required by CCC, the per-acre rental payment requested by the owner or operator in such owner's or operator's request to participate in the CRP.

Offeror means an eligible person as determined by CCC who submits an offer of eligible acreage for enrollment into the CRP to enter into a CRP contract.

Operator means a person who is in general control of the farming operation on the farm, as determined by CCC.

Payment period means the 10- to 15-year contract period for which the participant receives an annual rental payment.

Perennial crop means an agricultural commodity that is produced from the same root structure for two or more years, as determined by CCC.

Permanent vegetative cover means perennial stands of approved combinations of certain grasses, legumes, forbs, shrubs and trees with a life span of 10 or more years.

Permanent wildlife habitat means a vegetative cover with the specific purpose of providing habitat, food, or cover for wildlife and protecting other environmental concerns for the life of the contract.

Practice means a conservation, wildlife habitat, or water quality measure with appropriate operations and management as agreed to in the conservation plan to accomplish the desired program objectives according to CRP and FOTG standards and specifications as a part of a conservation management system.

Riparian buffer means a strip or area of vegetation adjacent to a river or stream of sufficient width as determined by the Deputy Administrator to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality, which are also intended to provide shade to reduce water temperature for improved habitat for aquatic organisms and supply large woody debris for aquatic organisms and habitat for wildlife.

Soil loss tolerance (T) means the maximum average annual erosion rate specified in the FOTG that will not adversely impact the long-term productivity of the soil.

State means State agencies, departments, districts, county or city governments, municipalities or any other State or local government of the State.

State Technical Committee means a committee established pursuant to part 610 of this chapter to provide information, analysis, and recommendations to the U.S. Department of Agriculture.

State water quality priority areas means any area so designated by the State committee, in consultation with the State Technical Committee, where agricultural pollutants contribute to water degradation or create the potential for failure to meet applicable water quality standards or the goals and requirements of Federal or State water quality laws. These areas may include areas designated under section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1329) as water quality protection areas, sole source aquifers or other designated areas that result from agricultural nonpoint sources of pollution. Acreage in these areas may be determined eligible as conservation priority areas.

Technical assistance means the assistance provided in connection with the CRP to owners or operators as approved by CCC, for developing conservation and/or tree planting plans, determining the eligibility of land and practices, implementing and certifying practices, and ensuring contract performance.

Violation means an act by the participant, either intentional or unintentional, that would cause the participant to no longer be eligible for all or a portion of cost-share, incentive, or annual contract payments.

Water Bank Program (WBP) means the program authorized by the Water Bank Act of 1970, as amended, in which eligible persons enter into 10-year agreements to preserve, restore, and improve wetlands.

Water cover means flooding of land by water either to develop or restore shallow water areas for wildlife or wetlands, or as a result of a natural disaster.

Wellhead protection area means the area designated by EPA or the appropriate State agency with an Environmental Protection Agency approved Wellhead Protection Program for water being drawn for public use, as defined for public use by the Safe Drinking Water Act, as amended.

Wetland means land defined as wetland in accordance with provisions of part 12 of this title.

Wetlands farmed under natural conditions means land defined as wetlands farmed under natural conditions in accordance with provisions of part 12 of this title.

Wetlands Reserve Program (WRP) means the program authorized by part 1467 of this chapter in which eligible persons enter into long-term agreements to restore and protect wetlands.

§ 1410.3 General description.

(a) Under the CRP, CCC will enter into contracts with eligible participants to convert eligible land to a conserving use during the contract period in return for financial and technical assistance.

(b) A participant must obtain and adhere to a conservation plan prepared in accordance with CRP guidelines, as established and determined by CCC. A conservation plan for eligible acreage must be obtained by a participant and must be approved by the conservation district in which the lands are located unless the conservation district declines to review the plan, in which case the provider of technical assistance may take such further action as is needed to account for lack of such review.

(c) The objectives of the CRP are to cost-effectively reduce water and wind erosion, protect the Nation's long-term capability to produce food and fiber, reduce sedimentation, improve water quality, create and enhance wildlife habitat, and other objectives including encouraging more permanent conservation practices and tree planting.

(d) Except as otherwise provided, a participant may, in addition to any payments under this part, receive cost-share assistance, rental or easement payments, tax benefits, or other payments from a State or a private organization in return for enrolling lands in CRP. However, a participant

may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage under any law, as determined by the Deputy Administrator. Further, under no circumstances may the cost-share payments received under this part, or otherwise, exceed the cost of the practice, as determined by CCC.

§ 1410.4 Maximum county acreage.

(a) Except as provided in paragraph (b) of this section, the maximum acreage that may be placed in the CRP and the WRP may not exceed 25 percent of the total cropland in the county; further, no more than 10 percent of the cropland may be subject, in the aggregate, to a CRP or WRP easement.

(b) The restrictions in paragraph (a) of this section may be waived by CCC if CCC determines that such action would not adversely affect the local economy of the county and that operators in the county are having difficulties complying with conservation plans implemented under part 12 of this title.

(c) These restrictions on participation shall be in addition to any other restriction imposed by law.

§ 1410.5 Eligible persons.

(a) In order to be eligible to enter into a CRP contract in accordance with this part, a person must be an owner, operator, or tenant of eligible land and:

(1) If an operator of eligible land, seeking to participate without the owner, must have operated such land for at least 12 months prior to the close of the applicable signup period and must provide satisfactory evidence that such operator will be in control of such eligible land for the full term of the CRP contract period;

(2) If an owner of eligible land, must have owned such land for at least 12 months prior to the close of the applicable signup period, unless:

(i) The new owner acquired such land by will or succession as a result of the death of the previous owner;

(ii) The only ownership change in the 12-month period occurred due to foreclosure on the land and the owner of the land, immediately before the foreclosure, exercises a timely right of redemption from the mortgage holder in accordance with State law; or

(iii) As determined by the Deputy Administrator, the circumstances of the acquisition are such that present adequate assurance that the new owner of such eligible land did not acquire such land for the purpose of placing it in the CRP; or

(3) If a tenant, the tenant is a participant with an eligible owner or operator.

(b) Notwithstanding paragraph (a) of this section, under continuous signup provisions authorized by § 1410.30, an otherwise eligible person must have owned or operated, as appropriate, the eligible land for at least 12 months before submitting the offer.

§ 1410.6 Eligible land.

(a) In order to be eligible to be placed in the CRP, land must be one of the following:

(1) Cropland that is subject to a conservation plan and has been annually planted or considered planted, as defined in § 1410.2, to an agricultural commodity in 4 of the 6 crop years from 1996 through 2001, as determined by the Deputy Administrator, provided further that field margins that are incidental to the planting of crops may also be considered qualifying cropland to the extent determined appropriate by the Deputy Administrator; and is physically and legally capable of being planted in a normal manner to an agricultural commodity, as determined by the Deputy Administrator; or

(2) marginal pasture land, as determined by the Deputy Administrator, that:

(i) is enrolled in the crop year or has been enrolled during any of the 2 years preceding the crop year in the WBP; and

(A) The WBP contract of the owner or operator of the cropland expired or will expire in calendar year 2000, 2001, or 2002; and

(B) The acreage is not classified as naturally occurring type 3 through 7 wetlands, as determined by the Deputy Administrator, regardless of whether the acreage is or is not protected by a Federal agency easement or mortgage restriction (types 3 through 7 wetlands that are normally artificially flooded shall not be precluded from eligibility), and;

(C) Enrollment in CRP would enhance the environmental benefits of the site, as determined by Deputy Administrator; or

(ii) Is determined to be suitable for use as a riparian buffer. A field or portion of a field of marginal pasture land may be considered to be suitable for use as a riparian buffer only if, as determined by CCC, it:

(A) Is located adjacent to permanent stream corridors excluding corridors that are considered gullies or sod waterways; and

(B) Is capable, when permanent grass, forbs, shrubs, or trees, are grown, or when planted with appropriate vegetation for the area, including vegetation suitable for wetland restoration or wildlife habitat, as determined appropriate by the Deputy Administrator, of substantially reducing sediment and/or nutrient runoff that otherwise would be delivered to the adjacent stream or waterbody or for water quality purposes; or

(3) Must be acreage enrolled in the CRP during the final year of the CRP contract provided the scheduled expiration date of the current CRP contract is before the effective date the new CRP contract, as determined by the Deputy Administrator.

(b) Land qualifying under paragraphs (a)(1) or (a) (2) of this section must also meet one of the following criteria, to be eligible for a contract:

(1) Be a field or portion of a field determined to be suitable for use, as determined by the Deputy Administrator, as a permanent wildlife habitat, filter strip, riparian buffer, contour grass strip, grass waterway, field windbreak, shelterbelt, living snowfence, other uses as determined by the Deputy Administrator, land devoted to vegetation on salinity producing areas, including any applicable recharge area, or any area determined eligible for CRP based on wetland or wellhead protection area criteria. A field or portion of a field may be considered to be suitable for use as a filter strip or riparian buffer only if it, as determined by CCC:

(i) Is located adjacent to a stream, other waterbody of a permanent nature (such as a lake, pond, or sinkhole), or wetland; excluding such areas as gullies or sod waterways; and

(ii) Is capable, when permanent grass, forbs, shrubs or trees are grown, of substantially reducing sediment or nutrient runoff that otherwise would be delivered to the adjacent stream or waterbody;

(2) Be a field that has evidence of scour erosion caused by out-of-bank flows of water, as determined by CCC:

(i) In addition, such land must:

(A) Be expected to flood a minimum of once every 10 years; and

(B) Have evidence of scour erosion as a result of such flooding.

(ii) To the extent practicable, be the actual affected cropland areas of a field; however, the entire cropland area of an eligible field may be enrolled if:

(A) The size of the field is 9 acres or less; or

(B) More than one third of the cropland in the field is land that lies between the water source and the inland limit of the scour erosion.

(iii) Or, if the full field is not eligible for enrollment under this paragraph, be the cropland between the waterbody and inland limit of the scour erosion together with, as determined by the Deputy Administrator, additional areas that would otherwise be unmanageable

and would be isolated by the eligible areas.

(iv) Be planted to an appropriate tree species according to the FOTG, unless tree planting is determined to be inappropriate by NRCS, in consultation with the Forest Service, in which case the eligible cropland shall be devoted to another acceptable permanent vegetative cover in accordance with the FOTG;

(3) Be cropland that would facilitate a net savings in groundwater or surface water of the agricultural operation of the producer as determined by CCC;

(4) Be cropland in a portion of a field not enrolled in the CRP, if more than 50 percent of the remainder of the field is enrolled as a buffer practice, if the portion of the field not enrolled in the CRP will be enrolled as part of the buffer practice, and if as determined by CCC:

(i) The remainder of the field is infeasible to farm; and

(ii) The remainder of the field is enrolled at an annual payment rate not to exceed the maximum annual calculated soil rental rate;

(5) Be contributing to the degradation of water quality or posing an on-site or off-site environmental threat to water quality if such land remains in production;

(6) Be devoted to certain covers, as determined by the Deputy Administrator, that are established and maintained according to the FOTG, provided such acreage is not required to be maintained as such under any life-span obligations, as determined by the Deputy Administrator;

(7) Be non-irrigated or irrigated cropland that produces or serves as the recharge area, as determined by the Deputy Administrator, for saline seeps, or acreage that is functionally related to such saline seeps, or where a rising water table contributes to increased levels of salinity at or near the ground surface;

(8) Have an EI of greater than or equal to 8 calculated by using the weighted average of the EI's of soil map units within the field;

(9) Be within a public wellhead protection area;

(10) Be within a designated conservation priority area;

(11) Be designated as a cropped wetland and appropriate associated acreage, as determined by the Deputy Administrator;

(12) Be cropland that, as determined by the Deputy Administrator, is associated with noncropped wetlands and would provide significant environmental benefits; or

(13) Notwithstanding paragraph (a)(1) of this section, be cropland devoted to a perennial crop, as determined by CCC; such cropland will only be eligible for continuous signup practices authorized by § 1410.30 and CREP practices authorized by § 1410.50(b).

(c) Notwithstanding paragraphs (a) and (b) of this section, land shall be ineligible for enrollment if, as determined by the Deputy Administrator, land is:

(1) Federally-owned land unless the applicant has a lease for the contract period;

(2) Land on which the use of the land is restricted through deed or other restriction prior to enrollment in CRP prohibiting the production of agricultural commodities during any part of the contract term except for eligible land under paragraph (a)(2) and (3) of this section, as determined by CCC; or

(3) Land already enrolled in the CRP unless authorized by § 1410.6(a)(3), as determined by the Deputy Administrator.

§ 1410.7 Duration of contracts.

(a) Except as provided in paragraphs (b) or (c) of this section, contracts under this part shall be for a term of 10 years.

(b) In the case of land devoted to riparian buffers, filter strips, restoration of wetlands, hardwood trees, shelterbelts, windbreaks, wildlife corridors, or other practices deemed appropriate by CCC under the original terms of a contract subject to this part or for land devoted to eligible practices under a contract modified under § 1410.10, the participant may specify the duration of the contract between 10 years and 15 years in length.

(c) All contracts shall expire on September 30 of the appropriate year.

§ 1410.8 Conservation priority areas.

(a) CCC may designate National conservation priority areas according to paragraph (c) of this section.

(b) Subject to CCC review, State FSA committees, in consultation with NRCS and the State Technical Committee, may designate conservation priority areas within guidelines established by the Deputy Administrator. Such designation must clearly define conservation and environmental objectives and provide analysis of how CRP can cost-effectively address such objectives. Generally, the total acreage of all conservation priority areas, in aggregate, shall not total more than 33 percent of the cropland in a State unless there are identified and documented extraordinary environmental needs, as determined by the Deputy Administrator.

(c) As determined by the Deputy Administrator, a region shall be eligible for designation as a priority area only if the region has actual significant adverse water quality, air quality, wildlife habitat, or other natural resource impacts related to activities of agricultural production, or if the designation helps agricultural producers to comply with Federal and State environmental laws.

(d) Conservation priority area designations shall expire after 5 years unless re-designated, except they may be withdrawn:

(1) At the request of the appropriate State water quality agency; or

(2) By the Deputy Administrator.

(e) In those areas designated as conservation priority areas, under this section, cropland is considered eligible for enrollment according § 1410.6(b)(10) based on identified environmental concerns. These concerns may include water quality, such as assisting agricultural producers to comply with nonpoint source pollution requirements, air quality, or wildlife habitat (especially for threatened and endangered species or those species that may become threatened and endangered), as determined by the Deputy Administrator.

§ 1410.9 Conversion to trees.

An owner or operator who has entered into a CRP contract prior to November 28, 1990, may elect to convert areas of highly erodible cropland, subject to such contract, that is devoted to permanent vegetative cover, from such cover to hardwood trees, (including alley cropping and riparian buffers of hardwood trees, where permitted by CCC), windbreaks, shelterbelts, or wildlife corridors.

(a) For any contract modified under this section, the participant may elect to extend such contract in accordance with the provisions of § 1410.7(b).

(b) For any contract modified under this section in which such areas are converted to windbreaks, shelterbelts, or wildlife corridors, the owner must agree to maintain such plantings for a time period established by the Deputy Administrator at the time of the contract modification.

(c) CCC shall, as it determines appropriate, pay up to 50 percent of the eligible cost of establishing new conservation measures authorized under this section, except that the total cost-share paid under such contract, including cost-share assistance paid when the original cover was established, may not exceed the amount by which CCC would have paid had such land

been originally devoted to such new conservation measures.

(d) For any contract modified under this section, the participant must participate in the Forest Stewardship Program (16 U.S.C. 2103a).

§ 1410.10 Restoration of wetlands.

(a) An owner or operator who entered into a CRP contract on land that is suitable for restoration to wetlands or that was restored to wetlands while under such contract, may, if approved by CCC, subject to any restrictions as may be imposed by law, apply to transfer such eligible acres subject to such contract that are devoted to an approved cover from the CRP to the WRP. Transferred acreage shall be terminated from the CRP effective the day a WRP easement is filed. Participants will receive a prorated CRP annual payment for that part of the year the acreage was enrolled in the CRP according to § 1410.42. Refunds of cost-share payments or applicable incentive payments need not be refunded unless specified by the Deputy Administrator.

(b) An owner or operator who has enrolled acreage in the CRP may, as determined and approved by CCC, restore suitable acres to wetlands with cost-share assistance provided that Federal cost-share assistance has not been received for wetland restoration on the same land. In addition to the cost-share limitation in § 1410.41, an additional one-time financial incentive may be provided to encourage restoration of the hydrology of the site.

§ 1410.11 Farmable Wetlands Program.

(a) In addition to other allowable enrollments, land may be enrolled in this program through the Farmable Wetlands Program within the overall Conservation Reserve Program provided for in this part.

(b) As determined by the Deputy Administrator, owners and/or operators may enroll cropland that has been planted or considered planted to an agricultural commodity, as defined in § 1410.2 in three of the ten most recent crop years, provided that the cropland:

(1) Is a wetland, including a converted wetland, as determined by CCC, that does not exceed the size limitations of this section; and

(2) Subject to other provisions of this section, is buffer acreage that provides protection for and is contiguous to the wetland.

(c) An owner or operator may not enroll in this program any wetland, or land in a flood plain, that:

(1) Is located adjacent to a perennial riverine system wetland as identified on the final national wetland inventory map of the Department of the Interior; or

(2) Is located adjacent to a perennial stream identified on a 1–24,000 scale map of the United States Geological Survey, when the area is not delineated on a final national wetland inventory map.

(d) Total enrollment in the CRP under this section shall not exceed 1 million acres.

(e) The maximum size of a wetland enrolled under this section shall be 10 contiguous acres of which only the first 5 acres shall be eligible for payments.

(f) The maximum size of any buffer acreage described in paragraph (b)(2)(ii) of this section shall be the greater of:

(1) An area three times the size of the wetland described in paragraph (b)(1) of this section; or

(2) An area that continues no more than 150 feet from the edge of the wetland.

(g) The maximum total acreage enrolled in the CRP under this section, including any wetland and buffer acreage described in paragraph (b)(2) of this section, in a tract, as determined by the Deputy Administrator, of an owner or operator, is 40 acres.

(h) All participants subject to a CRP contract under this section must agree to restore the hydrology of the wetland described in paragraph (b)(1) of this section to the maximum extent possible, as determined by the Deputy Administrator, in accordance with the FOTG.

(i) Offers for contracts under this section shall be submitted under continuous signup provisions as authorized in § 1410.30.

(j) Except as otherwise determined by the Deputy Administrator, all other requirements of this part shall apply to enrollments under this section, and the Deputy Administrator by contract or otherwise may add such other requirements or conditions as are deemed necessary. Such additional conditions include but are not limited to payment limitations, adjusted gross income limitations, and limitations on the amount of acreage that can be enrolled in any one county.

§§ 1410.12–§§ 1410.19 [Reserved]

§ 1410.20 Obligations of participant.

(a) All participants subject to a CRP contract must agree to:

(1) Carry out the terms and conditions of such CRP contract;

(2) Implement the conservation plan, which is part of such contract, in accordance with the schedule of dates included in such conservation plan unless the Deputy Administrator determines that the participant cannot fully implement the conservation plan for reasons beyond the participant's control, and CCC agrees to a modified plan. However, a contract will not be terminated for failure to establish an approved vegetative or water cover on the land if, as determined by the Deputy Administrator:

(i) The failure to plant or establish such cover was due to excessive rainfall, flooding, or drought;

(ii) The land subject to the contract on which the participant could practicably plant or establish to such cover is planted or established to such cover; and

(iii) The land on which the participant was unable to plant or establish such cover is planted or established to such cover after the wet or drought conditions that prevented the planting or establishment subside;

(3) Establish temporary vegetative cover either when required by the conservation plan or, as determined by the Deputy Administrator, if the permanent vegetative cover cannot be timely established;

(4) Comply with part 12 of this title;

(5) Not allow grazing, harvesting, or other commercial use of any crop from the cropland subject to such contract except for those periods of time approved in accordance with instructions issued by the Deputy Administrator;

(6) Establish and maintain the required vegetative or water cover and the required practices on the land subject to such contract and take other actions that may be required by CCC to achieve the desired environmental benefits and to maintain the productive capability of the soil throughout the contract period;

(7) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(8) Control on land subject to such contract all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved cover as necessary or may be specified in the CRP conservation plan and to avoid an adverse impact on surrounding land, taking into consideration water quality, wildlife, and other needs, as determined by the Deputy Administrator; and

(9) Be jointly and severally responsible, if the participant has a share of the payment greater than zero, with the other contract participants in compliance with the provisions of such contract and the provisions of this part and for any refunds or payment adjustments that may be required for

violations of any of the terms and conditions of the CRP contract and this part.

§ 1410.21 Obligations of the Commodity Credit Corporation.

CCC shall, subject to the availability of funds:

(a) Share up to 50 percent of the cost with participants of establishing eligible practices specified in the conservation plan at the levels and rates of cost-sharing determined in accordance with the provisions of this part; and

(b) Pay to the participant for a period of years not in excess of the contract period an annual rental payment, including applicable incentive payments, in such amounts as may be specified in the CRP contract.

§ 1410.22 CRP conservation plan.

(a) The producer shall obtain a CRP conservation plan that complies with CCC guidelines and is approved by the conservation district for the land to be entered in the CRP. If the conservation district declines to review the CRP conservation plan, or disapproves the conservation plan, such approval may be waived by CCC.

(b) The practices included in the CRP conservation plan and agreed to by the participant must cost-effectively reduce erosion necessary to maintain the productive capability of the soil, improve water quality, protect wildlife or wetlands, protect a public well head, or achieve other environmental benefits as applicable.

(c) If applicable, a tree planting plan shall be developed and included in the CRP conservation plan. Such tree planting plan may allow up to 3 years to complete plantings if 10 or more acres of hardwood trees are to be established.

(d) If applicable, the CRP conservation plan shall address the goals included in the conservation priority area designation authorized under § 1410.8.

(e) All CRP conservation plans and revisions of such plans shall be subject to the approval of CCC.

(f) Mid-cover management shall be conducted according to an approved conservation plan as part of the CRP contractual obligation such as light discing and burning as determined by the Deputy Administrator.

§ 1410.23 Eligible practices.

(a) Eligible practices are those practices specified in the conservation plan that meet all standards needed to cost-effectively:

(1) Establish permanent vegetative or water cover, including introduced or native species of grasses and legumes, forest trees, and permanent wildlife habitat;

(2) Meet other environmental benefits, as applicable, for the contract period; and

(3) Accomplish other purposes of the program.

(b) Water cover is eligible cover for purposes of paragraph (a) of this section only if approved by the Deputy Administrator for purposes such as the enhancement of wildlife or the improvement of water quality. Such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising aquiculture for commercial purposes.

§§ 1410.24–1410.29 [Reserved]

§ 1410.30 Signup.

Offers for contracts shall be submitted only during signup periods as announced periodically by the Deputy Administrator, except that CCC may hold a continuous signup for land to be devoted to particular uses, as CCC deems necessary. Generally, continuous signup is limited to those offers that would otherwise rank highly under § 1410.31(b) and may include high priority practices such as filter strips, riparian buffers, shelterbelts, field windbreaks, and living snow fences, grass waterways, shallow water areas for wildlife, salt-tolerant vegetation, and practices to benefit certain approved public wellhead protection areas.

§ 1410.31 Acceptability of offers.

(a) Except as provided in paragraph (c) of this section, producers may submit offers for the amounts they are willing to accept as rental payments to enroll their acreage in the CRP. The offers may, to the extent practicable, be evaluated on a competitive basis in which the offers selected will be those where the greatest environmental benefits relative to cost are generated, and provided that the offer is not in excess of the maximum acceptable payment rate established by the Deputy Administrator for the for the area offered. Acceptance or rejection of any offer, however, shall be in the sole discretion of the CCC and offers may be rejected for any reason as determined needed to accomplish the goals of the program.

(b) In evaluating contract offers, different factors, as determined by CCC, may be considered from time to time for priority purposes to accomplish the goals of the program. Such factors may include, but are not limited to:

(1) Soil erosion;

(2) Water quality (both surface and ground water);

(3) Wildlife benefits;

(4) Soil productivity;

(5) Likelihood that enrolled land will remain in non-agriculture use beyond the contract period, considering, for example, tree planting, permanent wildlife habitat, or commitments by a participant to a State or other entity to extend the conservation plan;

(6) Air quality; and

(7) Cost of enrolling acreage in the program.

(c) Acreage determined eligible for continuous signup, as provided in § 1410.30, may be automatically accepted in the program if the:

(1) Land is eligible under § 1410.6, as determined by the Deputy Administrator;

(2) A producer is eligible under § 1410.5; and

(3) A producer accepts either the maximum payment rate CCC is willing to offer to enroll the acreage in the program or a lesser rate.

§ 1410.32 CRP contract.

(a) In order to enroll land in the CRP, the participant must enter into a contract with CCC.

(b) The CRP contract is comprised of:

(1) The terms and conditions for participation in the CRP;

(2) The CRP conservation plan; and

(3) Any other materials or agreements determined necessary by CCC.

(c)(1) In order to enter into a CRP contract, the producer must submit an offer to participate as provided in § 1410.30;

(2) An offer to enroll land in the CRP shall be irrevocable for such period as is determined and announced by CCC. The producer shall be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which the offer is irrevocable as determined by the Deputy Administrator. CCC may waive payment of such liquidated damages if CCC determines that the assessment of such damages, in a particular case, is not in the best interest of CCC and the program.

(d) The CRP contract must, within the dates established by CCC, be signed by:

(1) The producer; and

(2) The owners of the cropland to be placed in the CRP and other eligible participants, if applicable.

(e) The Deputy Administrator is authorized to approve CRP contracts on behalf of CCC.

(f) CRP contracts may be terminated by CCC before the full term of the contract has expired if:

(1) The owner loses control of or transfers all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant voluntarily requests in writing to terminate the contract and obtains the approval of CCC according to terms and conditions as determined by CCC;

(3) The participant is not in compliance with the terms and conditions of the contract;

(4) Acreage is enrolled in another Federal, State or local conservation program;

(5) The CRP practice fails or is not established after a certain time period, as determined by the Deputy Administrator, and the cost of restoring the practice outweighs the benefits received from the restoration;

(6) The CRP contract was approved based on erroneous eligibility determinations; or

(7) CCC determines that such a termination is needed in the public interest.

(g)(1) Contracts for land enrolled in CRP before January 1, 1995, that have been continuously in effect may be unilaterally terminated by all CRP participants on a contract except for contract acreage:

(i) Located within a certain distance determined appropriate by the applicable FOTG of a perennial stream, or other permanent waterbody to reduce pollution and to protect surface and subsurface water quality;

(ii) On which a CRP easement is filed;

(iii) That is considered to be a wetland by USDA according to part 12 of this title;

(iv) Located within a wellhead protection area;

(v) That is subject to frequent flooding, as determined by the Deputy Administrator;

(vi) That may be required to serve as a wetland buffer according to the FOTG to protect the functions and values of a wetland; or

(vii) On which there exist one or more of the following practices, installed or developed as a result of participation in the CRP or as otherwise required by the conservation plan:

(A) Grass waterways;

(B) Filter strips;

(C) Shallow water areas for wildlife;

(D) Bottom land timber established on wetlands;

(E) Field windbreaks; and

(F) Shelterbelts.

(2) With respect to terminations under this paragraph:

(i) Any land for which an early termination is sought by the participant must have an EI of 15 or less;

(ii) The termination shall become effective 60 days from the date the participant submits notification to CCC of the participant's desire to terminate the contract;

(iii) Acreage terminated under this provision is eligible to be re-offered for CRP during future signup periods, provided that the acreage otherwise meets the current eligibility criteria; and

(iv) Participants must meet conservation compliance requirements of part 12 of this title to the extent applicable to other land.

(h) Except as allowed and approved by CCC where the new owner of land enrolled in CRP is a Federal agency that agrees to abide by the terms and conditions of the terminated contract, the participant in a contract that has been terminated must refund all or part of the payments made with respect to the contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in the contract. CCC may permit the amount to be repaid to be reduced to the extent that such a reduction will not impair the purposes of the program. Further, a refund of all payments need not be required from a participant who is otherwise in full compliance with the CRP contract when the land is purchased by or for the United States, as determined by CCC.

§ 1410.33 Contract modifications.

(a) As agreed between CCC and the participant, a CRP contract may be modified in order to:

(1) Decrease acreage in the CRP;

(2) Permit the production of an agricultural commodity under extraordinary circumstances during a crop year on all or part of the land subject to the CRP contract as determined by the Deputy Administrator;

(3) Facilitate the practical administration of the CRP; or

(4) Accomplish the goals and objectives of the CRP, as determined by the Deputy Administrator.

(b) CCC may modify CRP contracts to add, delete, or substitute practices when, as determined by the Deputy Administrator:

(1) The installed practice failed to adequately provide for the desired environmental benefit through no fault of the participant; or

(2) The installed measure deteriorated because of conditions beyond the control of the participant; and

(3) Another practice will achieve at least the same level of environmental benefit.

(c) Offers to extend contracts may be made as allowed by law.

(d) CCC may terminate a CRP contract if the participant agrees to such termination and CCC determines such termination to be in the public interest.

§§ 1410.34–1410.39 [Reserved]

§ 1410.40 Cost-share payments.

(a) Cost-share payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this part, cost-share payments may be made only for the cost-effective establishment or installation of an eligible practice, as determined by CCC.

(c) Except as provided in paragraph (d) of this section, cost-share payments shall not be made to the same owner or operator on the same acreage for any eligible practices that have been previously established, or for which such owner or operator has received cost-share assistance from any Federal agency.

(d) Except as provided for under § 1410.9(c), cost-share payments may be authorized for the replacement or restoration of practices for which cost-share assistance has been previously allowed under the CRP, only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control, enhance water quality, wildlife habitat, or increase protection of public wellheads; and

(2) The failure of the original practice was due to reasons beyond the control of the participant.

(e) The cost-share payment made to a participant shall not exceed the participant's actual contribution to the cost of establishing the practice and the amount of the cost-share may not be an amount that, when added to such assistance from other sources, exceeds the cost of the practices.

(f) CCC shall not make cost-share payments with respect to a CRP contract if any other Federal cost-share assistance has been, or is being, made with respect to the establishment of the cover crop on land subject to such contract.

§ 1410.41 Levels and rates for cost-share payments.

(a) As determined by the Deputy Administrator, CCC shall not pay more than 50 percent of the actual or average cost of establishing eligible practices specified in the conservation plan. CCC may allow cost-share payments for maintenance costs, consistent with the provisions of § 1410.40 and CCC may determine the period and amount of such cost-share payments.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the

State Technical Committee. Such cost may be the average cost in a State, a county, or a part of a State or county, as determined by the Deputy Administrator.

(c) Except as otherwise provided, a participant may, in addition to any payment under this part, receive cost-share assistance, rental payments, or tax benefits from a State or a private organization in return for enrolling lands in CRP. However, as provided under § 1410.40(f), a participant may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage, as determined by the Deputy Administrator. Further, under no circumstances may the cost-share payments received under this part, or otherwise, exceed the cost of the practice, as determined by CCC.

§ 1410.42 Annual rental payments.

(a) Subject to the availability of funds, annual rental payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the CRP contract.

(b) Annual rental payments, except for land accepted that was formerly enrolled under the WBP, include a payment based on a weighted average soil rental rate or marginal pastureland rental rate, as appropriate, and an incentive payment as a portion of the annual payment of certain practices, as determined by the Deputy Administrator. Payments for land accepted that was formerly enrolled under the WBP are limited to annual rental payments received under the WBP.

(c) The annual rental payment shall be divided among the participants on a single contract as agreed to in such contract.

(d) The maximum amount of rental payments that a person may receive under the CRP for any fiscal year shall not exceed $50,000. The regulations set forth at part 1400 of this chapter shall be applicable in making eligibility and ''person'' determinations as they apply to payment limitations under this part.

(e) In the case of a contract succession, annual rental payments shall be divided between the predecessor and the successor participants as agreed to among the participants and approved by CCC. If there is no agreement among the participants, annual rental payments shall be divided in such manner deemed appropriate by the Deputy Administrator and such distribution may be prorated based on the actual days of ownership of the property by each party.

(f) CCC shall, when appropriate, prepare a schedule for each county that shows the maximum soil rental rate CCC may pay which may be supplemented to reflect special contract requirements. As determined by the Deputy Administrator, such schedule will be calculated based on the relative productivity of soils within the county using NRCS data and local FSA average cash rental estimates. The schedule will be available in the local FSA office and, as determined by the Deputy Administrator, shall indicate, when appropriate, that:

(1) Offers of contracts by producers who request rental payments greater than the schedule for their soil(s) will be rejected;

(2) Offers of contracts submitted under continuous signup authorized at § 1410.30 may be accepted without further evaluation when the requested rental rate is less than or equal to the calculated weighted soil rental rate, based on the three predominant soils listed; and

(3) Otherwise qualifying offers shall be ranked competitively based on factors established under § 1410.31 of this part in order to provide the most cost-effective environmental benefits, as determined by the Deputy Administrator.

(g) Additional financial incentives may be provided to producers who offer contracts expected to provide especially high environmental benefits, as determined by the Deputy Administrator.

§ 1410.43 Method of payment.

Except as provided in § 1410.50, payments made by CCC under this part may be made in cash or other methods of payment in accordance with part 1401 of this chapter, unless otherwise specified by CCC.

§ 1410.44 Adjusted Gross Income.

Benefits under this part shall not be available to persons whose adjusted gross income exceeds 2.5 million dollars annually as determined under the standards set out in part 1400 of this chapter which shall be applicable in making adjusted gross income determinations as they apply to the CRP.

§§ 1410.45–1410.49 [Reserved]

§ 1410.50 Enhancement programs.

(a) For contracts to which a State, political subdivision, or agency thereof, has succeeded in connection with an approved conservation reserve state enhancement program, payments shall be made in the form of cash only. The provisions that limit the amount of payments per year that a person may receive under this part shall not be applicable to payments received by such State, political subdivision, or agency thereof in connection with agreements entered into under such enhancement programs carried out by such State, political subdivision, or agency thereof that has been approved for that purpose by CCC.

(b) CCC may enter into other conservation reserve enhancement program agreements in accordance with terms deemed appropriate by CCC, with a State, political subdivision, or agency thereof, to use the CRP to cost-effectively further specific conservation and environmental objectives of that State and the nation.

§ 1410.51 Transfer of land.

(a)(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to a CRP contract, as determined by the Deputy Administrator, such new owner or operator, upon the approval of CCC, may become a participant to a new CRP contract with CCC for the transferred land.

(2) For the transferred land, if the new owner or operator becomes a successor to the existing CRP contract, the new owner or operator shall assume all obligations of the CRP contract of the previous participant.

(3) If the new owner or operator is approved as a successor to a CRP contract with CCC, then, except as otherwise determined appropriate by the Deputy Administrator:

(i) Cost-share payments shall be made to the past or present participant who established the practice; and

(ii) Annual rental payments to be paid during the fiscal year when the land was transferred shall be divided between the new participant and the previous participant in the manner specified in § 1410.42.

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a CRP contract and the new owner or operator does not become a successor to such contract within 60 days, or such other time as the Deputy Administrator determines to be appropriate, of such transfer, such contract shall be terminated with respect to the affected portion of such land and the original participant:

(1) Forfeits all rights to any future payments for that acreage;

(2) Shall refund all previous payments received under the contract by the participant or prior participants, plus interest, except as otherwise specified

by the Deputy Administrator. The provisions of § 1410.32(h) shall apply.

(c) Federal agencies acquiring property, by foreclosure or otherwise, that contains CRP contract acreage cannot be a party to the contract by succession. However, through an addendum to the CRP contract, if the current operator of the property is one of the contract participants, such operator may, as permitted by CCC, continue to receive payments under such contract if:

(1) The property is maintained in accordance with the terms of the contract;

(2) Such operator continues to be the operator of the property; and

(3) Ownership of the property remains with such federal agency.

§ 1410.52 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of a CRP contract, CCC may terminate the CRP contract.

(2) If the CRP contract is terminated by CCC in accordance with this paragraph:

(i) The participant shall forfeit all rights to further payments under such contract and refund all payments previously received together, plus interest; and

(ii) Pay liquidated damages to CCC in an amount as specified in the contract.

(b) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate.

(c) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

§ 1410.53 Executed CRP contract not in conformity with regulations.

If, after a CRP contract is approved by CCC, it is discovered that such CRP contract is not in conformity with this part, these regulations shall prevail, and CCC may, at its sole discretion, terminate or modify the CRP contract, effective immediately or at a later date as CCC determines appropriate.

§ 1410.54 Performance based upon advice or action of the Department.

The provisions of § 718.8 of this chapter relating to performance based upon the action or advice of an authorized representative of the Department shall be applicable to this part, and may be considered as a basis to provide relief to persons subject to sanctions under this part to the extent that relief is otherwise required by this part.

§ 1410.55 Access to land under contract.

(a) Any representative of the U.S. Department of Agriculture, or designee thereof, shall, for purposes related to this program, be provided by the offeror or participant as the case may be, with access to land that is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) For land identified in paragraph (a) of this section, the participant or producer shall provide such representatives with access to examine records for the land to determine land classification, erosion rates, or other purposes and to determine whether it is in compliance with the terms and conditions of the CRP contract.

§ 1410.56 Division of payments and provisions about tenants and sharecroppers.

(a) Payments received under this part shall be divided as specified in the applicable contract and CCC shall ensure that producers who would have an interest in acreage being offered receive treatment that is equitable, as determined by the Deputy Administrator. CCC may refuse to enter into a contract when there is a disagreement among persons seeking enrollment as to a person's eligibility to participate in the contract as a tenant and there is insufficient evidence to indicate whether the person seeking participation as a tenant does or does not have an interest in the acreage offered for enrollment in the CRP.

(b) CCC may remove an operator or tenant from a CRP contract when:

(1) The operator or tenant requests in writing to be removed from the CRP contract;

(2) The operator or tenant files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by applicable bankruptcy laws;

(3) The operator or tenant dies during the contract period and the administrator of the estate fails to succeed to the contract within a period of time determined by the Deputy Administrator; or

(4) A court of competent jurisdiction orders the removal from the CRP contract of the operator or tenant and such order is received by FSA, as determined by the Deputy Administrator.

(c) In addition to paragraph (b) of this section, tenants shall maintain their tenancy throughout the contract period in order to remain on a contract. Tenants who fail to maintain tenancy on the acreage under contract, including failure to comply with applicable State law, may be removed from a contract by CCC. CCC shall assume the tenancy is being maintained unless notified otherwise by a party to contract.

§ 1410.57 Payments not subject to claims.

Subject to part 1403 of this chapter, any cost-share or annual payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1410.58 Assignments.

Participants may assign the right to receive such cash payments, in whole or in part, as provided in part 1404 of this chapter.

§ 1410.59 Appeals.

(a) Except as provided in paragraph (b) of this section, a participant or person seeking participation may appeal or request reconsideration of an adverse determination in accordance with the administrative appeal regulations at parts 11 and 780 of this title.

(b) Determinations by NRCS assigned to make such determination for the Deputy Administrator may be appealed in accordance with procedures established under part 614 of this title or otherwise established by NRCS.

§ 1410.60 Scheme or device.

(a) If CCC determines that a person has employed a scheme or device to defeat the purposes of this part, or any part, of any program, payment otherwise due or paid such person during the applicable period may be required to be refunded with interest thereon as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of cost-share assistance or annual rental payments, or obtaining a payment that otherwise would not be payable.

(c) A new owner or operator or tenant of land subject to this part who succeeds to the contract responsibilities shall report in writing to CCC any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest shall include a present, future, or conditional interest, reversionary interest, or any option, future or present, on such land, and any interest of any lender in such land where the lender has, will, or can

legally obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. Failure to fully disclose such interest shall be considered a scheme or device under this section.

§ 1410.61 Filing of false claims.

If CCC determines that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for payments under this part with respect to the program year in which the false information or claim was filed and the contract may be terminated, in which case a full refund of all prior payments may be demanded. False information or false claims include, but are not limited to, claims for payment for practices that do not comply with the conservation plan. Any amounts paid under these circumstances shall be refunded, together plus with interest as determined by CCC, and any amounts otherwise due to the participant shall be withheld. The remedies provided for in this section shall be in addition to any and all other remedies, criminal and/or civil, that may apply.

§ 1410.62 Miscellaneous.

(a) Except as otherwise provided in this part, in the case of death, incompetency, or disappearance of any participant, any payments due under this part shall be paid to the participant's successor(s) under part 707 of this title.

(b) Unless otherwise specified in this part, payments under this part shall be subject to the requirements of part 12 of this title concerning highly erodible land and wetland conservation and payments.

(c) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to, criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law; provided further the Deputy Administrator may add to the contract such additional terms as needed to enforce these regulations that shall be binding on the parties and may be enforced to the same degree as provisions of these regulations.

(d) Absent a scheme or device to defeat the purpose of the program, when an owner loses control of CRP acreage due to foreclosure and the new owner chooses not to continue the contract in accordance with § 1410.51, refunds shall not be required from any participant on the contract to the extent that the Deputy Administrator determines that forgiving such repayment is appropriate in order to provide fair and equitable treatment.

(e) Cropland enrolled in CRP shall be classified as cropland for the time period enrolled in CRP and, after the time period of enrollment, may be removed from such classification upon a determination by the county committee that such land no longer meets the definition in part 718 of this title.

(f) Research projects may be submitted by the State committee and authorized by the Deputy Administrator to further the purposes of CRP. The research projects must include objectives that are consistent with this part, provide economic and environmental information, not adversely affect local agricultural markets, and be conducted and monitored by a bona fide research entity, as determined by the Deputy Administrator.

§ 1410.63 Permissive uses.

(a) Unless otherwise specified by the Deputy Administrator, no uses of any kind are authorized on designated CRP acreage during the contract period.

(b) Commercial shooting preserves may be operated on CRP acreage provided:

(1) The commercial shooting preserve is licensed by a State agency such as the State fish and wildlife agency or State department of natural resources;

(2) The commercial shooting preserve is operated in a manner consistent with the applicable State agency rules governing commercial shooting preserves;

(3) CRP cover is maintained according to the conservation plan; and

(4) No barrier fencing or boundary limitations exist that prohibit wildlife access to or from the CRP acreage unless required by State law.

(c) The following activities may be permitted on CRP enrolled land:

(1) Managed haying and grazing, including the harvest of biomass:

(i) In exchange for a reduction of the annual payment in an amount determined by the Deputy Administrator;

(ii) Not to exceed once every three years after the CRP vegetative cover has been established; and

(iii) According to an approved CRP conservation plan consistent with the conservation of soil, water quality, and wildlife habitat (including habitat during nesting and brood rearing seasons) and in accordance with FOTG standards.

(2) Managed grazing that is incidental to the gleaning of crop residue, but only in exchange for a reduction in the annual rental payment, as determined appropriate by the Deputy Administrator.

(3) Wind turbines on CRP land installed in numbers and locations as determined appropriate by the Deputy Administrator considering the location, size, and other physical characteristics of the land, the extent to which the land contains wildlife, wildlife habitat, and the purposes of the CRP.

(4) Spot grazing, if necessary for control of weed infestation, not to exceed a 30-day period according to an approved conservation plan, but only in exchange for a payment reduction determined by the Deputy Administrator.

(5) Forestry maintenance such as pruning, thinning, and timber stand improvement on lands converted to forestry use only in accordance with a conservation plan and in exchange for an applicable reduction in the annual rental payment as determined by the Deputy Administrator.

(6) The sale of carbon, water quality, or other environmental credits, as determined by the Deputy Administrator.

Signed at Washington, DC, on May 2, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

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Part V

Department of Agriculture

Commodity Credit Corporation

Farm Service Agency

Record of Decision for the Programmatic Environmental Impact Statement on the Conservation Reserve Program; Notice

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm Service Agency

Record of Decision for the Programmatic Environmental Impact Statement on the Conservation Reserve Program

AGENCIES: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Record of decision.

SUMMARY: The Farm Service Agency (FSA) prepared a Final Programmatic Environmental Impact Statement (PEIS) for the Conservation Reserve Program (CRP) and the Notice of Availability was published in the **Federal Register** on January 17, 2003. This document presents the Record of Decision (ROD) regarding FSA implementation of the re-authorized CRP according to the provisions of the Farm Security and Rural Investment Act of 2002, Public Law 107–121 (2002 Farm Bill). The CRP is implemented through FSA on behalf of the Commodity Credit Corporation (CCC) and is governed by regulations published in 7 CFR part 1410. This decision record summarizes the reasons for FSA selecting the Proposed Action Alternative based on the program's expected environmental and socioeconomic impacts and benefits as documented in the PEIS, all of which were considered in this decision.

FOR FURTHER INFORMATION CONTACT: Don Steck, USDA/FSACEPD/Stop 0513, 1400 Independence Ave., SW., Washington, DC 20250–0153, (202) 690–0224, or e-mail at: *don_steck@wdc.usda.gov.* The final CRP PEIS, including appendices and this ROD, are available on the FSA Environmental Compliance Web site at: *http://www.fsa.usda.gov/dafp/cepd/epb/impact.htm#final.*

More detailed information on these programs may also be obtained from the FSA Web site at: *http://www.fsa.usda.gov/pas/default.asp* (general) *http://www.fsa.usda.gov/dafp/cepd/default.htm* (CRP, CREP, ECP, & NEPA).

Record of Decision

I. The Decision

A. Programmatic Environmental Impact Statement (PEIS) Proposed Action Alternative as the Basis for Implementing and Expanding CRP

Based on a thorough evaluation of the resource areas affected by CRP, a detailed analysis of four program alternatives, and a comprehensive review of public comments on the Draft PEIS, CCC has selected the Proposed Action Alternative to implement and expand the re-authorized CRP in accordance with the provisions of the 2002 Farm Bill.

B. Overview

CRP is the Federal Government's single largest conservation program for private lands. Through voluntary partnerships between individuals and the Government, CRP provides incentives and assistance to farmers and ranchers for establishing conservation practices that have a beneficial impact on resources both on and off the farm. CRP encourages participants to voluntarily plant permanent vegetative cover on land that is subject to erosion. This vegetation safeguards millions of acres of American topsoil from erosion, provides food and habitat for wildlife, and protects water quality by reducing runoff and sedimentation.

CRP provides annual rental payments and cost-share assistance to participants for establishing long-term, resource-conserving covers on eligible land. CRP, in most cases, makes annual rental payments based on the dry land agricultural rental value of the land, and provides cost-share assistance for up to 50 percent of the participant's costs in establishing approved conservation practices. Participants enroll in CRP contracts for 10 to 15 years. FSA administers the program, with technical support provided by the Natural Resources Conservation Service (NRCS), U.S. Forest Service, Cooperative State Research and Education Extension Service, State forestry agencies, local Soil and Water Conservation Districts, and others.

C. Programmatic Changes to CRP

To implement the Proposed Action, FSA would incorporate the provisions of the recently enacted 2002 Farm Bill into the CRP regulations and revise the CRP Handbook. The 2002 Farm Bill, which governs Federal farm programs for the next 6 years, was signed into law on May 13, 2002. The 2002 Farm Bill reauthorizes CRP through 2007 and stipulates the following changes be made to CRP:

- Increase the acreage enrollment authority to up to 39.2 million acres;
- Expand the Farmable Wetlands Program (FWP) nationwide with an aggregate acreage cap of up to 1 million acres;
- Change the cropping history requirement to be 4 out of 6 years prior to the enactment of the 2002 Farm Bill;
- Provide a 1-year extension for certain contracts on land planted to hardwood trees;
- Allow participants to enroll entire fields through certain continuous CRP practices when more than 50 percent of the field is enrolled as a buffer and the remainder of the field is infeasible to farm;
- Allow participants to continue existing vegetative cover, where practicable and consistent with the objectives of CRP; and
- Provide for managed haying (including for biomass), grazing, and construction of wind turbines on CRP lands.

II. Description of the Conservation Reserve Program

CRP was initiated by Congress in Title XII of the Food Security Act of 1985, Public Law 99–198, was extended by the Food, Agriculture, Conservation and Trade Act of 1990, Public Law 104–624, and then extended to 2002 by the Federal Agriculture Improvement and Reform Act of 1996, Public Law 107–171. It has currently been authorized to continue through 2007 by the 2002 Farm Bill.

A. Conservation Reserve Program—General Sign-up

CRP General Sign-up was established in its current form in 1985. This long-term land retirement program offers participants an annual per-acre rental payment and up to half the cost of establishing a permanent long-term conserving cover, in exchange for retiring environmentally-sensitive cropland from production for a minimum of 10 years to a maximum of 15 years. Producers offer land for competitive bidding based on an Environmental Benefits Index (EBI) during periodic announced signups. The current EBI is a form of environmental targeting which ranks offers based on environmental indices and cost.

B. Continuous CRP (CCRP)

CCRP is a program initiated by FSA in 1996, with 4 million acres reserved for enrollment of highly-environmentally sensitive land that would produce optimal environmental benefits for soils, water quality, and wildlife habitat enhancement through the implementation of high-priority conservation practices such as riparian buffers, filter strips, and grass waterways. Land eligible for these high-priority practices can be enrolled at any time and the land does not have to compete with other lands for enrollment under CRP general sign-up.

In April 2000, FSA authorized enhanced incentives to target highly environmentally-sensitive land for continuous signup participation which included: (1) An up-front Signing Incentive Payment (SIP) of $100 to $150 per acre (depending on the length of contract) for filter strips, riparian buffers, grassed waterways, field windbreaks, shelter belts, and living snow fences; (2) and a Practice Incentive Payment (PIP) equal to 40 percent of the cost of installing practices for all continuous signup practices. At that time, increased maintenance payments for certain practices were also added along with updated marginal pastureland rental rates to better reflect the agricultural value of these types of lands.

C. Farmable Wetlands Program (FWP)

FWP was established as a pilot program by the 2001 Agricultural Appropriations Act, Public Law 106–387, under which farmed wetland acres were made eligible to be enrolled through a continuous sign-up similar to that of CCRP for other high-priority conservation practices. Payments were commensurate with those provided to landowners who implemented CRP conservation practices like filter strips. The wetlands and associated buffers enrolled under the pilot program were limited to 500,000 acres in six States: Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota, with no more than 150,000 acres enrolled in any single State. Under the provisions of the 2002 Farm Bill, FWP will be expanded nationwide with an aggregate acreage cap of up to 1 million acres.

D. Conservation Reserve Enhancement Program (CREP)

In 1997, FSA implemented CREP as a joint Federal-State land retirement conservation program that uses the authorities of CRP in combination with State resources to target specific conservation and environmental objectives. It is a conservation partnership targeted to address specific State and nationally significant water quality, soil erosion, and wildlife habitat issues linked to agriculture and agricultural production activities.

III. Impacts Under the Alternatives Considered

FSA developed the Proposed Action Alternative based on provisions defined in the 2002 Farm Bill along with Agency scoping input provided before passage of the 2002 Farm Bill. FSA conducted formal public scoping for the PEIS and met with and solicited input from representatives of other Federal, State, and local agencies and the general public. The public scoping meetings were held in six cities located around the country. FSA published notices in the **Federal Register** and national newspapers that the agency was preparing a PEIS and that input was being sought through multiple venues including the public scoping meetings, a toll-free phone line, regular mail, and e-mail. The Proposed Action and three Alternatives considered in detail in the PEIS represented a range of program implementation choices that reflected the array of ideas voiced and recommendations made during that scoping process. The following alternatives are presented in detail in the Final PEIS.

A. No Program Alternative (Baseline)

This alternative was used as an analytical device to establish a baseline upon which to evaluate the other alternatives. The analysis established a baseline by describing what would have happened if CRP had never been implemented.

B. No Action Alternative (Current Program)

Under this alternative, FSA administration of CRP/CCRP/CREP would continue as if the pre-2002 Farm Bill provisions remained in effect, including the 4.2 million-acre holdback for CCRP and CREP.

C. Proposed Action Alternative (FSA's Preferred Alternative)

The Proposed Action is for FSA to implement changes in General CRP/CCRP/CREP administration based on the requirements of the 2002 Farm Bill. Some of the changes include: increasing the enrollment authority, changing the eligibility and cropping history requirements, implementing a nationwide farmable wetland program, and several additional minor program changes. Environmental-based allocation under the general sign-up would continue. FSA plans to utilize CCRP and CREP in addition to General CRP in its administration of CRP in a balanced way to maximize conservation benefits while minimizing adverse environmental impacts.

D. Environmental Targeting Alternative

Under this alternative, FSA would alter the mix of program goals and change acreage allocations to include CREP and continuous sign-up practices in designated environmentally-sensitive areas. The CRP general sign-up would be eliminated and the benefits produced directly by use of the EBI would be lost. Administration of CRP would then be accomplished using an environmental targeting approach that focuses program resources on addressing national or regional priority conservation goals. This targeting would be consistent with the current primary objectives of the program by targeting soil erosion, water quality, and wildlife habitat objectives in ecological regions, river basins, or impaired watersheds. Different strategies for allocating the additional acreage under the program cap would be evaluated by FSA.

If this alternative were selected, there would be no general sign-up CRP. Therefore, the environmental targeting for general sign-up under the Environmental Benefits Index (EBI) would be lost and there would be an increased risk in not enrolling all the acreage allocated under the 2002 Farm Bill. This would mean less soil, water quality, air quality, and wildlife habitat benefits because fewer acres would be enrolled than under the Proposed Action.

IV. Impacts Under the Alternatives

The environment affected by CRP consists of both the socioeconomic and natural environments associated with or affected by farming and farm conservation programs in the U.S. The natural environment includes the major terrestrial and aquatic eco-regions associated with eligible lands in the U.S. and associated sensitive resources, including:

- Soils.
- Soil and Wind Erosion (including Air Quality).
- Water Resources & Aquatic Species.
- Surface water.
- Total Maximum Daily Loads (TMDLs).
- Groundwater.
- Floodplains.
- Riparian Areas.
- Wetlands.
- Vegetation.
- Grasslands.
- Forestlands.
- Invasive Species.
- Wildlife.
- Wildlife Recreation.
- Threatened and Endangered Species (T&E).
- The social and economic aspects of the affected environment consist of farming from a national perspective and of rural communities that may be affected by CRP enrollment.

The following section summarizes some of the effects that would be expected to occur to the above-mentioned resource areas under each of the four alternatives. Due to the large programmatic scale of CRP, the timing, location, and magnitude of the

environmental effects will differ under the various alternatives.

A. No Program Alternative (Eliminate CRP)

Soil

Soil erosion rates would most likely be greater than 1.9 billion tons/year. Due to increased soil erosion rates, soil quality and productivity would also be adversely impacted.

Water Quality

Surface water quality would be substantially worse due to the loss of multiple benefits provided by vegetative cover established under CRP over the last 16 years. Impact on surface water quality would be significant and more streams would have a TMDL listing.

Groundwater quality and drinking water sources would be adversely impacted due to increased contamination by pesticides and fertilizers from land that would have been enrolled in CRP. Conservation practices targeting water quality improvement would, therefore, not be implemented.

Aquatic habitat and associated water quality would be severely impacted due to high nutrient, pesticide, and sediment runoff from cropland. See Surface and Groundwater impacts for No Program.

Floodplains, Riparian Areas, and Wetlands

Floodplain function would be decreased due to a decrease in permanent vegetative cover and an increase in soil erosion, sediment, and contaminant runoff from associated agricultural lands. There would also be a decrease in associated wetland restoration and riparian areas benefiting floodplain function; a decrease in riparian area function due to a decrease in permanent vegetative cover and an increase in soil erosion, sedimentation, and contaminant runoff from associated agricultural lands; and a decrease in riparian area restoration by 400,000 acres.

Wetlands benefits would decrease due to increased soil erosion rates resulting in sedimentation and contaminant runoff from farmlands. There would be an increase in continued use of farmed wetlands and associated uplands by approximately 3 million acres and a potential increase in wetland conversion caused by agricultural producers not participating in USDA programs regulated by Title XII of the Food Security Act of 1985, as amended. An estimated 600,000 acres of filter strips and wetland buffers would not be installed as a result of selecting this alternative.

Natural Vegetation

Without CRP, 25 million enrolled acres most likely would not have been planted to conservation cover and it might be assumed that the realized positive impacts of that cover type on cropland would be absent or considerably less. Incurred benefits of forestlands to water quality, wildlife, and soil stabilization would not have occurred in the absence of CRP. Incentives to enroll land devoted to the Longleaf Pine Conservation Priority Area (CPA) would not exist.

Wildlife

There would be significant negative impacts on local wildlife populations along with the availability of localized wildlife-based recreation such as viewing, hiking, hunting, and fishing. Continued agricultural practices could have a significant adverse impact on numerous T&E species but to what extent and to which species is unknown. There are some T&E species credited with utilizing CRP-created habitat.

Socioeconomic

On a national level, without CRP, the change in acreage planted to the major crops is expected to be minimal. However, at the local or regional level, there could be a moderate increase in planted acreage creating economic benefits arising from the additional need for farm labor, as well as demand for the services of agricultural businesses. There could also be a possible loss of recreational opportunities and a possible increased uncertainty of producer income, particularly for those non-farming landowners and part-time farmers. The magnitude of uncertainty is likely to be greater at the county or community level than nationally.

Long-term expansion of cropland supply could be beneficial for tenants, lowering rents. In the short term, the increased supply of cropland could raise rents due to temporary increase in productivity. A potentially significant decline in pheasant habitat and recreational benefits nationally and regionally would be seen in the absence of CRP, thus, potentially significantly declining of wildlife viewing benefits currently seen in the Great Plains. A potential modest decline in wildlife viewing benefits in the Northeastern region would also be seen.

Land-use decisions made by producers disconnected from environmental consideration would be based on maximizing market income. This would result in losses in soil quality, water quality, air quality, and wildlife habitat gains.

B. No Action Alternative (Continue CRP as Previously Implemented)

Soils

Soil erosion has decreased by 450 million tons since CRP's inception and additional soil erosion rate reductions would continue under this alternative. Soil quality has increased due to more topsoil left on the land and would continue as additional acreage is enrolled.

Water Quality

Surface water quality would continue to improve as producers enroll land under CRP, thus reducing runoff containing sediments, nutrients, and pesticides. TMDL-listed streams would decrease as cropland is enrolled but this would be based on the conservation practices installed on contract land and whether they directly target the impairments causing the listing.

Drinking water sources and groundwater in general would see a continued positive impact on both water quality and quantity, as cropland is taken out of production and enrolled in CRP. This would result in reduced levels of pesticides and fertilizers being used. Decreased sediment transport rates would produce a positive impact on aquatic species as further cropland is enrolled in CRP. Maintenance of high dissolved oxygen levels and cool water temperatures for aquatic organisms would continue as agricultural land is enrolled as wetland buffers.

Floodplains, Riparian Areas, and Wetlands

Floodplain function would increase due to an increase in permanent vegetative cover and a decrease in soil erosion, sediment, and contaminant runoff from agricultural lands. There would be an increase in associated wetland restoration and riparian areas benefiting floodplain function. Also, there would be an improvement and restoration of natural riparian area functions through increased vegetative cover, and reduced sediment and contaminant runoff from associated agricultural lands. There would also be an increase in riparian areas by 400,000 acres.

Water quality would improve from the reduction in sediment and contaminant runoff from agricultural lands. Wetland function would be restored to 542,278 acres of farmed wetlands and protection of 2.8 million acres of natural and farmed wetlands

from agricultural runoff. An additional 1.6 million acres of wetland restoration and an additional 600,000 acres of filter strips and wetland buffers protecting wetland water quality would be seen.

Natural Vegetation

Native and introduced grass species would continue to be planted on eligible cropland producing residual benefits to water quality and soils. Cropland enrolled and planted to tree practice acreage would continue to cleanse runoff water, silt, and pollutants, protecting and improving streams while simultaneously providing food and shelter for wildlife. The Longleaf Pine CPA would continue to see enrollment of additional tree planting acres and thus provide additional positive benefits to water, soils, and wildlife in that region.

Wildlife

Areas devoted to permanent vegetation, wildlife habitat, and wetlands would continue to provide critical elements for species as more CRP acreage is enrolled. Enrollment targeted toward wildlife habitat enhancement would continue to provide critical resources and establish corridors between fragmented habitats. Continued benefits from the availability of wildlife-based recreation would be a positive impact under this alternative. Wetland restoration would continue to benefit waterfowl and upland game bird species and provide valuable habitat. Wetland buffers would continue to provide additional habitat and protection from human disturbance. Continued enhancement of wildlife habitat could produce positive impacts on T&E species.

Socioeconomic

No adverse impact on farm employment at the regional or state level would occur. However, there could be possible adverse impacts at the county or community level. There is insufficient research to support a definitive conclusion as to the magnitude of either of those impacts. A minimal impact of CRP on cropland supply would be seen. On a national and regional level, the effect of CRP land rent appears to be insignificant. At the State, county, or township level, the impact may be adverse and nominal to moderate in magnitude. There would be no change in recreational benefits.

Landowners would benefit from environmental improvements and stable income stream. Local communities would benefit from enhanced recreation and lower costs to residents and industry from air and water improvements. There could be potentially adverse impacts to tenant farmers and new farm startups.

C. Environmental Targeting Alternative

Soils

States with CREP Agreements would see additional soil erosion reduction in areas targeted if approved practices consist of permanent vegetative cover and approved soil conservation practices. Under most targeting scenarios, erosion could increase as other objectives are emphasized. Minor benefits on soil erosion could be accomplished if multiple regions, States, and watersheds are targeted to specifically address soil erosion by utilizing collaborative decision making of all interested parties and an ecosystem driven conservation initiative. Because of location, gross sheet and rill erosion may be less. Associated soil benefits of wetlands would increase as the FWP is opened to all States. Overall enrollment in general signup acreage would decrease under this alternative. As this enrollment declines, national benefits of soil erosion reduction would be significantly less.

Water Quality

States with CREP Agreements would see additional water quality benefits in areas targeted if approved practices consist of water quality enhancement conservation practices. Moderate positive impacts on water quality could be accomplished if multiple regions, States, and watersheds are targeted to address water quality impairments by using collaborative decision making of all interested parties and an ecosystem driven conservation initiative. This idea could be most beneficial when addressing effects in the Gulf of Mexico and the Chesapeake Bay Region. TMDL-listed streams would likely decrease based on the specific environmental targeting of those watersheds in the National Environmental Target Area (NETA) that have been identified as contributors to the large-scale water quality impairment problem. Overall enrollment in general CRP signup acreage would decrease under this alternative. As this enrollment declines, so would the positive impacts these acres play at maintaining good water quality.

States with CREP Agreements would see additional groundwater quality benefits if areas targeted are known groundwater source areas and if approved practices consist of water quality enhancement conservation practices. No real national impacts to groundwater quality can be accomplished if multiple regions, States, and watersheds are targeted to address groundwater quality impairments. This would be due to the fact that groundwater issues tend to be more localized and could therefore be better addressed through the CREP Agreements. TMDL-listed streams could decrease based on the specific environmental targeting of those watersheds in the NETAs that have been identified as having common groundwater quality problems. Overall enrollment in general CRP signup acreage would decrease under this alternative along with the subsequent positive impacts on groundwater quality and quantity.

States with CREP Agreements would see additional water quality benefits in areas targeted which would provide aquatic species with the optimal conditions for species success but only if approved practices consist of water quality enhancement conservation practices that have been proven to directly benefit aquatic species and their associated habitat. Minor national benefits to aquatic species could be accomplished by targeting water quality issues in multiple regions, States, and watersheds that are impaired severely. Overall, enrollment in General CRP signup acreage and associated benefits to aquatic species would decrease under this alternative.

Floodplains, Riparian Areas, and Wetlands

Beneficial impacts to floodplains as described under the No Action Alternative would possibly be seen in States with CREP Agreements. Positive benefits to floodplains could be accomplished by targeting floodplain and related resource issues in multiple regions, States, and watersheds. Overall enrollment in general CRP signup acreage and associated benefits to floodplains and riparian areas would be decreased under this alternative. However, the beneficial impacts to riparian areas as described under the No Action Alternative would be seen in States with CREP Agreements. Positive benefits to riparian areas can be accomplished by targeting riparian areas and related resource issues in multiple regions, States, and watersheds.

Natural Vegetation

Beneficial impacts to wetlands as described under No Action Alternative in States with CREP Agreements. Benefits to wetlands could be accomplished by targeting wetlands and related resource issues in multiple regions, States, and watersheds. Overall,

enrollment in General CRP signup acreage and its associated benefits to wetland areas would be decreased under this alternative.

States with CREP Agreements would see additional benefits associated with grasslands in areas targeted by approved CREP agreements, if approved practices consist of native grass species establishment conservation practices. Overall, enrollment in General CRP signup acreage and associated benefits to grasslands would be decreased under this alternative.

States with CREP Agreements would see additional benefits associated with forestlands targeted by approved CREP agreements, if approved practices consist of tree planting conservation practices. The direct positive impact of forestland restoration would benefit local CREP regions in a State by improving and protecting soil quality, water quality, and wildlife habitat, and by creating more opportunities to enjoy nature. Benefits on forestlands if multiple regions, States, and watersheds are targeted to address forestland restoration and protection would be most beneficial in the current Longleaf Pine CPA and other National Forestland areas in ecological impairment. Overall, enrollment in General CRP signup acreage and associated benefits to forestlands would be decreased under this alternative.

Wildlife

States with CREP Agreements would see additional wildlife benefits in areas targeted if approved practices consist of wildlife enhancement or wetland restoration conservation practices. Positive benefits to wildlife could be accomplished if multiple regions, States, and watersheds are targeted at specifically addressing wildlife habitat enhancement by utilizing collaborative decision making of all interested parties and an ecosystem-driven conservation initiative. Overall enrollment in General CRP signup acreage and associated benefits would be decreased under this alternative.

Benefits to T&E species and their habitat are not as likely at this level unless the species or habitat targeted encompasses large geographic areas, multiple States, or numerous watersheds. States with CREP Agreements would see additional T&E species and habitat benefits in areas targeted if approved practices consist of conservation practices targeting the species or species habitat in question.

Socioeconomic

Insignificant effect would be demonstrated on agricultural employment at the regional and State level with a potential increased uncertainty of producer income particularly for those non-farming landowners and part-time farmers. The magnitude of uncertainty is likely to be greater at the county or community level than at the regional or national level. There would likely be a change in the regional distribution of enrolled land with the decreased probability of the enrollment of entire fields providing a benefit in the increased supply of rental land. A potential increase in the supply of cropland and a possible reduction in enrollment due to it being a voluntary program would not ensure that all allocated acres are enrolled. The cost would be prohibitive. Some currently participating communities may experience reduced benefits. These impacts would be more concentrated in communities located in or near areas of program.

D. Proposed Action Alternative (FSA's Preferred Alternative)

Soils

Cumulative positive impacts on soils would continue as CRP is reauthorized and contracts are approved for 10 to 15 years with additional acreage allocated toward the program. The increased acreage could potentially reduce soil erosion by another 40 million tons. Marginal pastureland being devoted to vegetative cover would allow these areas to implement practices to help reduce soil erosion and reduce sediment runoff on these land types. An increase in the cropping history requirement has the potential to moderately impact soils by targeting cropland that has been under more intensive production and thus possibly more vulnerable to wind and water erosion than currently required to enroll in CRP. However, positive impacts would continue on those already vegetative areas because the new cropping history provision makes the breaking of new ground to create a cropping history impossible. Infeasible-to-farm areas smaller than 50 percent of the field size enrolled along with a buffer would contribute to some enhancement of soil quality, but only if enrolling it would contribute to reduced soil erosion rates. The ability to continue with existing cover where practicable and consistent with wildlife benefits of CRP would benefit soils by not removing the established vegetative cover. The potential for wind and water erosion on plowed fields would decrease. Managed haying, grazing, and harvesting will increase plant diversity and vigor. These practices should not produce any adverse impacts on soils because they must be included in the conservation plan or in the land management plan prior to contract approval. CREP Agreements would target areas within States to provide positive benefits to soil quality. Continued positive impacts on long-term soil quality would occur if States place CREP land under easement. Associated soil benefits of wetlands would increase as the FWP is opened to all States.

Water Quality

Major positive impacts on surface water quality would continue as CRP is reauthorized and contracts are approved for 10 to 15 more years with additional acreage allocated toward the program and additional acres being enrolled to replace expiring acres. A 40-million ton decrease in sediment would correlate to an increase in water quality and a decrease in nutrient and pesticide loads. Positive impacts in terms of reduced nonpoint source (NPS) pollutant loading to achieve TMDL's would occur when producers enroll land that has been cropped (4 out of 6 years prior to 2002 Farm Bill enactment), but the impact would be important only if contract land is located within a watershed having NPS issues. Marginal pastureland being devoted to vegetative cover would allow these areas to implement practices to help improve water quality and reduce sediment runoff on these land types. Infeasible to farm areas smaller than 50 percent of the field size enrolled along with a buffer would contribute to the enhancement of water quality, but only if conservation practices targeted at improving water quality are adopted. The ability to continue with existing cover where practicable and consistent with wildlife benefits of CRP would benefit water quality by not removing established vegetative cover and decreasing the potential for wind and water erosion on plowed fields. Managed haying, grazing, and harvesting practices should not produce adverse impacts on surface water based on the premise that the practices must be included in the conservation plan or in the land management plan prior to contract approval. Associated water quality benefits of wetlands would increase as FWP goes nationwide. CREP Agreements would target areas within States to provide positive benefits to water quality. CCRP would provide buffers along streams to reduce sediment runoff and subsequent water quality improvements would give direct positive benefits to aquatic species.

There would be continued cumulative positive impacts on groundwater quality

as CRP is reauthorized and contracts are approved for 10 to 15 years with additional acreage allocated toward the program and additional acres being enrolled to replace expiring ones. Drinking water sources and groundwater in general would see a continued positive impact on both water quality and quantity, as cropland is taken out of production and enrolled in CRP. This would result in reduced levels of pesticides and fertilizers being used. Marginal pastureland being devoted to vegetative cover would allow these areas to implement practices to help improve groundwater quality and reduce chemical leaching on these land use types. An increase in the cropping history requirement has the potential to produce a positive impact on groundwater by targeting cropland that has been under more intensive production and thus possibly more vulnerable to leaching than currently required to enroll in CRP. Certain infeasible to farm areas less than 50 percent of the field size enrolled along with a buffer would contribute to some enhancement of groundwater quality, but only if conservation practices targeted at improving water quality are installed. The ability to continue with existing cover where practicable and consistent with wildlife benefits of CRP would benefit water quality by not removing established vegetative cover and decreasing the potential for wind and water erosion on plowed fields. Managed haying, grazing, and harvesting should not produce adverse impacts on surface water based on the premise that it must be included in the conservation plan or in the land management plan prior to contract approval. Associated groundwater quality benefits of wetlands would increase as FWP goes expands to all States. CREP Agreements would target areas within States to provide positive benefits to groundwater quality.

Floodplains, Riparian Areas, and Wetlands

The expansion of FWP would allow for an increased distribution and acreage of wetland restoration and buffers nationwide, decreasing the rate of sediment transport to adjacent water bodies and increasing the associated aquatic species benefits described under the No Action Alternative. The size of eligible wetlands would be increased from 5 acres to 10 acres, providing an increase in potential acreage that could benefit aquatic species by 2.8 million acres. Managed haying, grazing, and harvesting should not produce adverse impacts to aquatic species based on the premise that requirements for these practices must be included in the conservation plan or in the land management plan prior to contract approval, so aquatic species associated with the environmentally targeted enrolled land are not adversely affected. CREP Agreements would target areas within States to provide positive benefits to aquatic species. CCRP would provide buffers along streams to reduce sediment runoff, and subsequently improve water quality, which would have direct positive benefits on aquatic species.

Beneficial impacts to floodplains, as described under the No Action Alternative, would continue as CRP is reauthorized and contracts are approved for 10 to 15 more years with additional acreage allocated toward the program and additional acres being enrolled to replace expiring acres. There would be an increase in potential acreage of beneficial impacts to floodplains by 2.8 million acres. There would be continued benefits from hardwood tree contracts associated with floodplains for an additional year. Beneficial impacts to floodplains in States with CREP Agreements in place would be the same as those described under the No Action Alternative. Also, permanent easements under CREP would provide continued maintenance of floodplains functions and values.

Beneficial impacts to riparian areas, as described under the No Action Alternative, would continue as CRP is reauthorized and contracts are approved for 10 to 15 years with additional acreage allocated toward the program and additional acres being enrolled to replace expiring ones. There would be an increase in potential acreage of beneficial impacts to riparian areas by 2.8 million acres and continued benefits from hardwood tree contracts associated with riparian areas for an additional year. There would also be benefits from devotion of marginal pastureland to vegetation, particularly trees in riparian areas. The use of CCRP would target riparian areas by protecting them as buffers with permanent vegetative cover, which would reduce runoff. The ability to continue with existing cover where practicable and consistent with wildlife benefits of CRP will benefit associated riparian areas. Beneficial impacts to riparian areas in States with CREP Agreements in place would be the same as those described under the No Action Alternative. Also, permanent easements under CREP would provide continued maintenance of these riparian areas functions and values. Permitting haying and grazing in response to drought or other emergencies should have minor impacts on riparian areas. Potential increase in eligible acreage for buffer establishment when more than 50 percent of the field is eligible for enrollment and the other half is infeasible to farm. The increased distribution and acreage of wetland restoration and buffers nationwide through FWP expansion will benefit eligible associated riparian areas.

Beneficial impacts to wetlands, as described under the No Action Alternative, would continue as CRP is reauthorized and contracts are approved for 10 to 15 years with additional acreage allocated toward the program and additional acres being enrolled to replace expiring ones. There would be an increase in potential acreage of beneficial impacts to wetlands by 2.8 million acres. Land eligibility for CRP re-enrollment will extend associated beneficial impacts to wetlands for another 10 to 15 years. There would be continued benefits from hardwood tree contracts associated with wetlands for an additional year and an increase in potential wetland acres from conversion of marginal pastureland to wetlands. The ability to continue with existing cover where practicable and consistent with wildlife benefits of CRP will benefit wetland water quality by not removing established vegetative cover and increasing the potential for wind and water erosion on plowed-up fields. There would be beneficial impacts to wetland water quality from increased conservation of surface and groundwater in agricultural operations. An increased distribution of wetland restoration and buffer acreage would potentially be seen nationwide through the expansion of FWP. Wetland functions would potentially increase through FWP expansion of allowable wetland restoration acreage from 5 to 10 acres. State CREP Agreements could target sensitive areas with large numbers of wetlands and permanent easements could provide protection of wetlands and associated buffers.

Natural Vegetation

Grasslands throughout the country would benefit as more acreage is enrolled implementing the establishment of grass cover. However, new EBI scoring is currently being developed in connection with new regulations to implement CRP in accordance with the provisions of the 2002 Farm Bill. Ecological benefits associated with tree planting conservation practices would continue for an additional 10 to 15 years. Additional croplands enrolled and planted with tree practices would continue to cleanse silt and pollutants from runoff water, especially if installed

in riparian areas, thereby protecting and improving streams while simultaneously providing food and shelter for wildlife for an additional 10 to 15 years of CRP contracts. Marginal pastureland in additional tree practice acreage would continue to be enrolled along with other continuous practices that involve tree plantings, such as: Shelter belts, field windbreaks, and living snow fences implemented on sensitive cropland enrolled. However, the new provision would allow grasses, forbs, and shrubs to be planted on marginal pastureland along with trees, resulting in a positive impact through the creation of habitat from which multiple species may benefit. State CREP Agreements would target areas where plantings of certain species, such as hardwoods, would improve local ecosystems and provide associated benefits to water quality and wildlife.

Wildlife

Land with wildlife habitat benefits could be increased by almost 3 million acres. However, the amount of quality habitat would be dependent on the types of vegetation planted. Managed haying, grazing and harvesting, along with wind turbine placement, if done correctly and in accordance with conservation plans, would have little or no impact on resident wildlife. Permitting existing cover to continue, where practicable and consistent with wildlife benefits of CRP, would continue to have lasting positive impacts on wildlife habitat already established with vegetative cover. This would be true as long as the maintenance schedule documented in the conservation plan is followed. An increase in acreage allocated to CRP could increase the amount of upland game habitat, habitat used by birds and neo-tropical migrants and the amount of protected wetlands, simultaneously and proportionally increasing the recreation chances for those people who like to bird watch, hunt, fish, and to enjoy nature. State CREP Agreements would target specific areas with needs associated with wildlife habitat protection and restoration and achieve additional benefits. Permanent protection of wildlife through the use of easements could also be achieved with the use of State CREP Agreements. CCRP could provide positive benefits to certain wildlife species by establishing grassed and forested buffers.

Additional acreage allocated to CRP could potentially have a positive impact on almost 3 million additional acres of protected land that could be used, in part, as habitat by many T&E species. States with CREP Agreements would see additional T&E species and habitat benefits in areas targeted by the approved CREP agreement, if approved practices consist of conservation practices targeting the species or species habitat in question.

Socioeconomic

There would be insignificant adverse impacts on agricultural employment in areas gaining in CRP enrollment and potential insignificant adverse impacts on agricultural employment in areas losing CRP enrollment. No impact would be predicted on agricultural land rents at the regional and national level. Reallocation of income within the local economy with possible increased agricultural output, income in non-agricultural sectors of the economy and additional spending on agricultural inputs. Reallocation could affect leakage of value added from the local economy. There would be potential beneficial, long-term and nominal to moderate increase in agricultural land values from a reduction in the cropland supply and the capitalization of CRP income into land value. A potential increase in recreational opportunities and shifts in recreational opportunities between regions would provide certainty to the participants of CRP-related income over the long term.

The impacts would be similar to those identified under No Action Alternative. The changes would improve program performance and increase flexibility but would not substantially alter program effects on social community.

V. Rationale for Decision

The Proposed Action Alternative complies with the 2002 Farm Bill, provides FSA the most flexibility in terms of program implementation and environmental targeting, increases the significant positive benefits of CRP, and is the most balanced approach to achieving long-term program goals. The No Program Alternative was used as an analytical baseline. The Current Program Alternative would continue to produce positive benefits but without the enhancements of the 2002 Farm Bill. The Environmental Targeting Alternative runs a risk of under-enrollment and, therefore, lost environmental benefits. Many of the beneficial aspects of the environmental targeting alternative are already included in the proposed action through CREP and CCRP.

VI. Implementation and Monitoring

FSA will implement CRP, CREP, CCRP and FWP in a manner that provides the greatest amount of benefits to the environment while causing the least amount of adverse impacts. FSA will ensure that impacts are minimized through a process of completing site specific environmental evaluations for each approved contract as well as programmatic environmental assessments for CREP agreements.

Signed in Washington, DC, on May 2, 2003.

James R. Little,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–11406 Filed 5–5–03; 3:35 pm]

BILLING CODE 3410–05–P

Federal Register

Thursday,
May 8, 2003

Part VI

The President

Executive Order 13298—Termination of Emergency With Respect to the Actions and Policies of UNITA and Revocation of Related Executive Orders

Federal Register
Vol. 68, No. 89
Thursday, May 8, 2003

Presidential Documents

Title 3—

The President

Executive Order 13298 of May 6, 2003

Termination of Emergency With Respect to the Actions and Policies of Unita and Revocation of Related Executive Orders

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution 1448 of December 9, 2002,

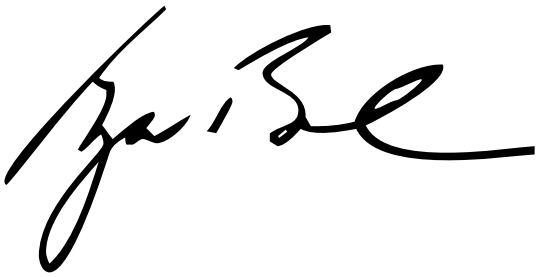
I, GEORGE W. BUSH, President of the United States of America, find that the situation that gave rise to the declaration of a national emergency in Executive Order 12865 of September 26, 1993, with respect to the actions and policies of the National Union for the Total Independence of Angola (UNITA), and that led to the steps taken in that order and in Executive Order 13069 of December 12, 1997, and Executive Order 13098 of August 18, 1998, has been significantly altered by the recent and continuing steps toward peace taken by the Government of Angola and UNITA. Accordingly, I hereby terminate the national emergency declared in Executive Order 12865, revoke Executive Orders 12865, 13069, and 13098, and order:

Section 1. Pursuant to section 202 of the NEA (50 U.S.C. 1622), termination of the national emergency with respect to the actions and policies of UNITA shall not affect any action taken or proceeding pending, not finally concluded or determined as of the effective date of this order, or any action or proceeding based on any act committed prior to the effective date of this order, or any rights or duties that matured or penalties that were incurred prior to the effective date of this order.

Sec. 2. This order in not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, or its departments, agencies, entities, officers, employees, or agents.

Sec. 3. (a) This order is effective 12:01 a.m. eastern daylight time on May 7, 2003.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.



THE WHITE HOUSE,
May 6, 2003.

[FR Doc. 03–11713
Filed 5–7–03; 11:14 am]
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